



KAMARAJAR PORT LIMITED

(A Company of Chennai Port Authority)

MANUAL FOR PROCUREMENT OF NON-CONSULTANCY SERVICES



MARCH 2025



KAMARAJAR PORT LIMITED

NON-CONSULTANCY SERVICES MANUAL

MARCH 2025



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FOREWORD

1. Ports spend sizeable amounts of their budgets on works, Consultancy services/Non-consultancy services to create Assets and to maintain them. Ports have been delegated powers to make their own arrangements for procurement of works. In order to effectively plan the projects and monitor them, Ports procure the services of expert Consultants in the field so that the Port officers can concentrate on the day-to-day management of the operations.
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/Consultants/Service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement which provide framework for the public procurement system.
3. The Manual for Procurement of Consultancy and Other Services was first prepared in 2006 and later comprehensively reviewed in 2017 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. In 2024, DoE has issued a revised draft Manual for procurement of Consultancy services by separating the Non-Consultancy & Other services.
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 based on the Model Tender 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 Non-Consultancy 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.

MARCH 2025

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TABLE OF CONTENTS

Section -1

Contents

Abbreviations and Acronyms.....	10
Procurement Glossary.....	15
Chapter-1	25
Introduction.....	25
1.1. Procurement Rules and Regulations; and this Manual	25
1.2. Clarification, Amendments and Revision of this Manual	25
1.3. Applicability of this Manual	26
1.4. Categorisation of procurements.....	28
1.5. Authorities Competent to incur Expenditure on a Procurement.....	30
1.6. Basic Aims of Procurement – Five R's of Procurement	30
1.7. Fundamental Principles of Public Procurement	31
1.8. Public Procurement Infrastructure at the Centre.....	31
1.8.1. Procurement Policy Division	31
1.8.2. Central Public Procurement Portal.....	31
1.9. Preferential/Mandatory Purchase from certain sources	31
1.9.1. Public Procurement Policy for Micro and Small Enterprises (MSEs).....	32
1.9.2. Procurement Preference to Make in India.....	34
1.9.3. Restrictions/ Prior Registration on Entities from a Class of Countries:	35
1.9.4. Support to Start-up Enterprises	35
1.10. When is Procurement of Non-Consultancy Services justified.....	36
1.11. Principles for Public Procurement of Non-Consultancy Services.....	36
1.12. The Law of Agency – applicable to Procurements.....	37
1.13. Public Procurement Cycle in Consultancy Services	37
1.14. Nomenclature Conundrum.....	38
Chapter-2.....	39
Need assessment and Procurement Planning.....	39
2.1. Need Assessment.....	39

2.2.	Process in Procurement Proposal	39
2.2.1.	Preparing Procurement Proposal/ Concept Paper	39
2.2.2.	In-principle Approval for initiating procurement of Services	40
2.3.	Developing a Procurement Plan	40
2.3.1.	Planning the Procurement	40
2.3.2.	Need assessment - Risks and Mitigations	42
Chapter-3		44
Preparation of Services and Activities Schedules		44
3.1	Services and Activities Schedule	44
3.2	Estimating Costs, Setting the Budget, and seeking Approval.	49
3.3.	Final Administrative and Budgetary Approvals.....	49
Chapter-4		51
Participation of Bidders-Legal status		51
4.1.	Eligibility Criteria for Participation in Tender Process	51
4.2.	Legal Status of Bidders.....	52
4.2.1.	Natural Persons.....	52
4.2.2.	Private and Public Entities	53
4.2.3.	Association of several Bidders.....	53
Chapter-5		55
Governance Issues in Procurement of services		55
5.1.	Governance Issues.....	55
5.1.1.	Standards (Canons) of Financial Propriety	55
5.1.2.	Right to Information and Proactive Information Disclosures.....	55
5.1.3.	Code of Integrity for Public Procurement (CIPP).....	56
5.2.	Integrity Pact (IP)	56
5.3.	Development of New Sources and Registration	57
5.4.	Debarment of Suppliers	57
5.5.	Enlistment of Indian Agents	57
5.6.	Grievances and its Redressal.....	57
5.7.	Investigations of Serious Deviations from Procurement Guidelines	59
5.8.	Conduct of Public Servants in Procurement - Risks and Mitigations	60
Chapter-6		63
Bidding Design for Non-Consultancy Services		63
6.1.	Admeasurement of Services.....	63

6.1.1. Input Admeasurement	63
6.1.2. Output-Admeasurement	64
Chapter-7	67
Types of Contracts	67
7.1. Types of Contracts	67
7.2. Lump Sum Contract	67
7.3. Time-Based Contract	68
7.4. Percentage (Success/ contingency Fee) Contract	69
7.5. Indefinite Delivery Contract – Output or Input Admeasurement	70
Chapter-8	72
Systems of Selection	72
8.1. Systems of Selection of service providers	72
8.2. Price based System - Least Cost Selection (LCS)	73
8.3. Quality and Cost Based Selection (QCBS)	74
8.4. Direct Selection: Single Source Selection (SSS)	75
Chapter-9	77
Modes of Procurement	77
9.1. Modes of Procurement	77
9.2. Open Tender Enquiry (OTE)	78
9.3. Global Tender Enquiry (GTE)	80
9.4. Rate Contract (RC)/ Framework Agreement (FA)	82
9.5. Limited Tender Enquiry (LTE)	88
9.6. Special Limited Tender Enquiry (SLTE)	89
9.7. Single Tender Enquiry (STE)	89
9.8. Award of Work through Quotations	90
9.9. Direct Procurement without Quotation or by Purchase Committee	90
Chapter-10	91
Tendering Systems	91
10.1. Tendering Systems	91
10.2. Single-Stage Tendering System	91
10.2.1. Single Stage Single Envelope System	91
10.2.2. Single Stage Two Envelopes System (Two Bid System)	92
10.3. Single Stage Multiple Envelope System (1S3E)	92

10.4. Two-Stage Bidding - EoI Tenders	93
10.4.1. Expression of Interest Tenders – Market Exploration	93
Chapter-11	94
Channels of Procurement.....	94
11.1. Electronic Procurement	94
11.2. Mandatory Procurement of Services through (GeM)	95
11.3. Procurement through Centralized Agencies or other Organizations	95
Chapter-12.....	96
Bid Invitation Process	96
12.1. Preparation and Uploading/ Floating of Tender Documents	96
12.1.1. Model Tender Documents.....	96
12.1.2. Tender Documents	96
12.1.3. Contents of Tender Documents	98
12.1.4. Notice Inviting Tender	99
12.1.5. Instructions to Bidders (ITB)	100
12.1.6. General and Special Conditions of the Contract	100
12.1.7. Schedule of Requirements and Services and Activities Schedule	100
12.1.8. Performance Standards and Quality Assurance	100
12.1.9. Qualification Criteria	101
12.1.10. Financial Bid (BOQ Excel Sheet).....	103
12.1.11. Submission Forms and Formats.....	104
12.1.12. Important provisions of ITB.....	104
12.1.13. Uploading of Tender Documents: Mandatory e-Publishing.....	106
12.1.14. Amendment of Tender Documents	106
12.1.15. Extension of Deadline of Bid Submission	106
12.2. Obtaining Tender Documents and Submitting Bids.....	107
12.2.1. Availability and Cost of Tender Documents.....	107
12.2.2. Participation of Bidders.....	108
12.2.3. Pre-bid Conference and Pre-NIT Conference	108
12.2.4. Site Visit	109
12.2.5. Clarification of Tender Documents	109
12.3. Withdrawal/ Amendments / Modifications to Bids by Bidders	109
12.4. Sealing/ Marking of Bids in off-line Tenders	110
12.5. Uploading/ Submission of Bids	110

12.5.1. Uploading Bids in eProcurement	110
12.5.2. Submission of Bids in offline Tender Process:	112
12.5.3. Bid security:.....	113
12.5.4. Bid Validity.....	113
12.6. Opening of Bids	113
12.7. Transparency and Protecting Third-Party Rights of Bidders	115
12.8. Bidding Invitation Process- Risks and Mitigations	116
Chapter-13	118
Forms of Securities.....	118
13.1. Forms of Security	118
13.1.1. Bid Security	118
13.2. Performance Security	119
13.3. Verification of Bank Guarantees	121
13.4. Safe Custody and Monitoring of Instruments.....	122
Chapter-14	123
Prices, Payment Terms and Price Variations	123
14.1. Payment Clause	123
14.2. Terms of Payment.....	124
14.3. Advance Payment.....	125
14.3.1. Conditions for Advance Payments	125
14.3.2. Documents for Advance Payments.....	125
14.4. Firm Price, and Variable Price	125
14.5. Statutory Taxes/ Duties/ Levies.....	128
14.5.1. Goods and Services Tax (GST)	128
14.5.2. Deduction of Income Tax from Payments	130
14.5.3. Statutory Variation Clause	130
14.6. Recovery of Public Money from Supplier's Bill.....	130
14.7. Refund from Supplier.....	130
Chapter-15	131
Evaluation of Bids.....	131
15.1. Tender Evaluation Process	131
15.1.1. Basic Considerations.....	131
15.1.2. Schedule of Procurement Powers (SoPP)	134
15.1.3. Timely Processing of Tenders	135

15.1.4. Extension of Bid Validity Period	136
15.2. Contacting Port during the evaluation:.....	136
15.3. Preparation and Vetting of Comparative Statement.....	137
Chapter-16	138
Tender Evaluation Committee	138
16.1. Role of Tender Committee (TEC).....	138
16.1.1. Composition of Tender Evaluation Committee	138
16.1.2. No Conflict of Interest.....	139
16.2. Handling Dissent among Tender Committee	140
16.3. Tender Evaluation Committee Recommendations/Report	140
16.4. Preliminary Examination of bids	141
16.4.1. Evaluation of responsiveness of Bids	141
16.4.2. Evaluation of the Techno-commercial Bids	145
16.5. Financial Evaluation.....	147
16.5.1. General Norms for Ranking of Financial Bids	147
16.5.2. LCS Selection.....	149
16.5.3. SSS selection	150
16.5.4. QCBS Selection	150
16.5.5. Global Tender Enquiry	150
16.5.6. Evaluation Process in Tender cum e-Reverse Auction.....	151
16.5.7. Reasonableness of Rates Received	153
16.5.8. Consideration of Abnormally Low Bids	153
16.5.9. Cartel Formation/ pool rates	154
16.5.10. Negotiations for Reduction of Prices.....	156
16.5.11. Evaluation of Concurrent Application	157
16.1.14. Evaluation of Bids – Risks and Mitigation	158
Chapter-17	161
Award of Contract	161
17.1. Port's Rights	161
17.2. LoA to Successful Bidder.....	161
17.3. Publication of Award of Contract.....	163
17.4. Performance Security	163
17.5. Acknowledgement of Contract by Successful Bidder and Execution	163
17.6. Framing of Contract.....	164

17.7. Procurement Records	166
Chapter-18	167
Special Types of Non-Consultancy Procurements	167
18.1. Expression of Interest (Eol)	167
18.1.1 Expression of Interest (EOI) for Shortlisting of Service Providers	167
18.1.2. Short List of Service Providers	170
18.2. Single Source Selection (SSS)	172
18.3. Selection of Individual service providers	173
18.4. Selection of Specialized Agencies/ Institutions	174
18.5. Selection of Non-governmental Organizations (NGO)	174
18.6. Procurement Agents	175
18.7. Inspection Agents	175
18.8. Housekeeping Services	176
18.9 Manpower Outsourcing Services	176
18.10. Private Security Manpower Services	177
18.11. Procurement of IT Services	178
Chapter-19	179
Monitoring Non-Consultancy services Contract.....	179
19.1. Contract Management	179
19.1.1. The Purpose of Contract Management	179
19.1.2. Costs of Delays in Contract Management Decisions	180
19.1.3. Contract Monitoring Committee – (CMC)	181
19.2. Contract Execution	181
19.2.1. Issuing Notice to Proceed, Kick-off Meeting and Pre-requisites	181
19.2.2. Review of Inception Phase	182
19.2.3. Monitoring of Progress	182
19.2.4. Issuing Contract Amendments/ Variations	184
19.2.5. Obligations Control	185
19.2.6. Safeguards for Handing over Port Materials/Equipment to Contractors	189
19.3. Controlling Scope of Supply and Quality	189
19.3.1. Scope of Services	189
19.3.2. Deployment of Resources and Penalty for Absence	190
19.3.3. Quality Control	191
19.3.4. Service Level Agreement (SLA)	191

Chapter-20	193
Time Control.....	193
20.1. Contract Period and Options	193
20.2. Delays	193
20.3. Extension of Delivery	194
20.4. Performance Notice	195
20.5. Denial Clause	195
20.6. Liquidated Damages.....	196
20.7. Force Majeure	197
Chapter-21	199
Cost Control: Billing and Payments	199
21.1. Payment to Service Providers	199
21.2. Payment of Taxes and Duties	200
21.3. Concluding the Assignment and Post Contract review	203
21.4. Payment against Time Barred Claims.....	204
21.5. Monitoring of Consultancy Contracts – Risks and Mitigation	205
Chapter-22	207
Disputes and Conflicts	207
22.1. Disputes.....	207
22.2. Excepted Matters.....	208
22.3. Adjudication	209
22.4. Mediation.....	209
22.5. Arbitration	213
Chapter-23	214
Termination of Services.....	214
23.1. Terminating Services Prior to End of Contract	214
23.1.1. Breach of Contract	214
23.1.2. Termination of Contract for Default	215
23.1.3. Termination of Contract for Convenience of Port	215
23.1.4. Frustration of Contract.....	216
23.1.5. Limitation of Liabilities	216
ANNEXURES	219
1 Delegation of Financial Powers	221

2 Powers for Incurring Contingent Expenditure	222
3 Suggested Structure of Schedule of Procurement Powers (SoPP).....	223
4 Format of Procurement Proposal	225
5 Services and Activities Schedule for NCS	227
6 Bid Opening Attendance Sheet cum Report	229
7 TEC Committee Minutes/Report Format.....	230
8 Certificate for Procurement of NCS without Quotation	234
9 Purchase Committee Certificate for Procurement of NCS	235
10 Limited Tender Form	236
11 Example of Formula for Price Variation Clause.....	239
12 Model Clause/ Certificate to be inserted in tenders	242
13 Integrity Pact Format.....	245
14 Invitation for Negotiations.....	259
15 Form of Declaration on Negotiations	260
16 Format of revised offer in Negotiations	261
17 Letter of Award of Contract.....	262
18 No Claim Certificate	263
SECTION-2.....	265
APPENDICES.....	265
1 Fundamental Principles of Public Procurement.....	267
2 Preference to Make in India	279
3 Restrictions on Entities from a Class of Countries	289
4 Code of Integrity for Public Procurement (CIPP)	302
5 Integrity Pact (IP)	307
6 Empanelment/ Pre-qualification of Firms.....	310
7 Debarment of Firms from Bidding.....	315
8 Guidelines for Evaluation of Concurrent Application	321
9 FAQs in Respect of Public Procurement Policy for MSEs.....	333
10 Arbitration.....	342
11 GFR-2017 - RULES	353
12 Quality and Cost Based Selection (QCBS).....	355

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Abbreviations and Acronyms

AAEC	-	Appreciable Adverse Effect on Competition
BC (selling)	-	Bill for Collection Selling (Foreign Exchange) Rate
BDS	-	Bid Data Sheet
BG	-	Bank Guarantee
BOC/TOC	-	Bid/Tender Opening Committee
BOQ	-	"Bill of Quantities" (refers to the Price Schedule in Excel sheet)
BSD	-	Bid Securing Declaration (in lieu of Bid Security, if permitted)
BSTC	-	Buyer Specific Terms & Conditions
C&AG	-	Comptroller and Auditor General (of India)
C(F)A	-	Competent (Financial) Authority
CBI	-	Central Bureau of Investigation
CCI	-	Competition Commission of India
CEC	-	Consultancy Evaluation Committee
CIPP	-	Code of Integrity for Public Procurement
CMC	-	Contract Management Committee
Col	-	Conflict of Interest
CPPP	-	Central Public Procurement Portal
CPSE	-	Central Public Sector Enterprise
CRAC	-	Consignee Receipt and Acceptance Certificate
CV	-	Curriculum Vitae
CVC	-	Central Vigilance Commission
CVO	-	Chief Vigilance Officer
DFPR	-	Delegation of Financial Power
DoE	-	Department of Expenditure (Ministry of finance)
DPIIT	-	Department for Promotion of Industry and Internal Trade
DSC	-	Digital Signature Certificate
EC	-	Evaluated Cost
ECS	-	Electronic Clearing System
NEFT	-	National Electronic Funds Transfer
EMD	-	Earnest Money Deposit

EoI	-	Expression of Interest (Tender)
EPF	-	Employee Provident Fund
ESI	-	Employee State Insurance
FA (&CAO)	-	Financial Adviser (and Chief Accounts Officer)
FC	-	Framework Contract
FEMA	-	Foreign Exchange Management Act
FM	-	Force Majeure
FTP	-	Full Technical Proposal
GCC	-	General Conditions of Contract
GeM	-	Government Electronic Market
GeMAR&PTS	-	GeM Availability Report and Past Transaction Summary
GFR	-	General and Financial Rules, 2017
Gol	-	Government of India
GTC	-	General Terms & Conditions
GTE	-	Global Tender Enquiry
HOD	-	Head of the Department
HUF	-	Hindu Undivided Family
ICT	-	Information & Communications Technology
IEM	-	Independent External Monitor
IP	-	Integrity Pact
IPC	-	Indian Penal code
IPR	-	Intellectual Property Rights
ISO	-	International Organization for Standardization
IT	-	Information Technology
ITB/ITT	-	Instructions to Bidders/Instructions to Tenderers
JV	-	Joint Venture (Consortium)
L-1	-	Lowest acceptable bidder who is techno-commercially responsive.
LC	-	Letter of Credit
LCC	-	Life Cycle Costing
LCS	-	Least Cost System

LD	-	Liquidated Damages
LEC	-	Lowest Evaluated Cost
LoA	-	Letter of Award
LTE	-	Limited Tender Enquiry
MEA	-	Ministry of External Affairs
MeitY	-	Ministry of Electronics and Information Technology
MHA	-	Ministry of Home Affairs
MII	-	Make in India (order)
MTD/ SBD	-	Model (Standard) Tender (Bid) Document
MoEF&CC	-	Ministry of Environment Forest & Climate Change
MRP	-	Maximum Retail Price
MSE	-	Micro and Small Enterprise
MSME	-	(Ministry of) Micro Small and Medium Enterprises
MSME(D)	-	Micro, Small and Medium Enterprises (Development Act, 2006)
NCLAT	-	National Company Law Appellate Tribunal
NGO	-	Non-Government Organisation
NIC	-	National Informatics Centre
NIT	-	Notice Inviting Tender
NPAE	-	Non-PFMS Agency/Entity
OTE	-	Open Tender Enquiry
PA	-	Procurement Agent(s)
PAN	-	Personal Account Number
PBG	-	Performance Bank Guarantee
PPD	-	Procurement Policy Division
PPP-MII	-	Public Procurement (Preference to Make in India), Order
PQB	-	Prequalification Bidding
PQC	-	Pre-qualification Criterion
PSARA	-	Private Security Agencies Regulation Act, 2005
PSU	-	Public Sector Undertaking
PVC	-	Price Variation Clause
QCBS	-	Quality and Cost Based Selection

RBI	-	Reserve Bank of India
REoI	-	Request for Expression of Interest
RTGS	-	Real Time Gross Settlement
RTI	-	Right to Information (Act)
SBD	-	Standard Bidding Document
SCC	-	Special Conditions of Contract
SD	-	Security Deposit
SHG	-	Self Help Group
SLA	-	Service Level Agreement
SoPP	-	Schedule of Procurement Powers
SoR	-	Schedule of Rates
SSS/ STE	-	Single Source Selection/ Single Tender Enquiry
STP	-	Simplified Technical proposal
TC/TEC	-	Tender Committee /Tender Evaluation Committee
TCO	-	Total Cost of Ownership
TCS	-	Tax Collected at Source
TDS	-	Tax Deducted at Source
UAM	-	Udyam Aadhaar Memorandum
URC	-	Udyan Registration Certificate
URDG	-	Uniform Rules for Demand Guarantees
VfM	-	Value for Money
WOL	-	Whole of Life Cost

Procurement Glossary

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

1. "Agent" is a person employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals.
2. "Allied firms" (including the term 'affiliates'/ 'affiliated firm', 'sister concern', 'associated firm', 'related party' in different contexts) of a bidder/ contractor (Principal firm, includes Joint Venture Company) is a firm/ concern that comes within the sphere of effective influence of the principal firm, based on –
 - i) Principal Firm being a proprietary firm owns it,
 - ii) Principal firm being a partnership firm, has common (all or majority of) partners, or any one of partners having profit share of 20% or more
 - iii) Common Management (say majority of director) with the Principal firm;
 - iv) Partners or directors of the principal firm have a majority interest in the management;
 - v) Principal firm has a controlling voice by owning substantial or majority (20% or more) shares;
 - vi) Principal firm directly or indirectly controls or is controlled by or is under common control, by way of any agreement/ MoU or otherwise, is a successor/ subsidiary to the principal firm or vice-a-versa;
 - vii) have common offices/ manufacturing facilities.
3. "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;
4. "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;
5. "Bidder registration document" means a document issued by a Port, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;

6. "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.;
7. "Bill of Quantities" (including the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the bid.
8. "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;
9. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
10. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
11. "Competent authority" means the officer(s) who finally approves the decision.
12. "Contract" (including the terms 'procurement Contract' or 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', 'rate contract' or 'framework contract' or 'Letter of Award – LoA' (letter or memorandum communicating to the contractor the acceptance of his bid) or 'Agreement' or a 'repeat order' accepted/ acted upon by the contractor or a 'formal agreement', under specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Port and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
13. "Contractor" (including the terms 'Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder' under specific contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Port), agents, subcontractor, representatives, heirs,

executors, and administrators as the case may be unless excluded by the terms of the contract.;

14. "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, Architectural Services, finance accounting and taxation services, training and development. It may include small works or supply of goods or Non-consultancy services which are incidental or consequential to such services;
15. "e-Procurement" means the use of information and communication technology (specially the internet) by the Port in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
16. "Goods" (including the terms 'Stores', 'Material(s)' in specific contexts) includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, hardware, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangibles, products like technology transfer, licenses, patents, software or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training, and maintenance etc. (Rule 143 of GFR 2017).;
17. "Invitation to (pre-) qualify" means a document including any amendment thereto published by the Port inviting offers for pre-qualification from prospective bidders;
18. "Invitation to register" means a document including any amendment thereto published by the Port inviting offers for bidder registration from prospective bidders;
19. "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

20. "Model Tender (Bidding) Document(s)" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents, or 'Standard Bidding Documents' - SBD in certain contexts) means a document issued by the Port, including any amendment thereto, that sets out the terms, conditions of the given procurement, and includes the invitation to bid. A Model (Standard) Tender (Bidding) Document is the model template to be used for preparing Tender Document after making suitable changes for specific procurement;
21. "Non-consultancy services" (including the term 'Other Services' or 'Outsourcing of Services' in specific contexts) are defined by exclusion as those services that cannot be classified as Consultancy Services. These involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be clearly identified and consistently applied and are bid and contracted on such basis e.g., drilling, aerial photography, satellite imagery, mapping, and similar operations. It may include small works or supply of goods or consultancy, which are incidental or consequential to such services; Any reference to Services shall be deemed to include the supply of goods or performance of consultancy service or small works, which are incidental or consequential to such services;
22. "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;
23. "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.;
24. "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of Non-consultancy services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). Besides outsourcing, Non-consultancy services also include procurement of short-term stand-alone services.
25. "Parties": The parties to the contract are the "Contractor" and the Port, as defined in this clause;
26. "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the

successful Bidder or Contractor in the form prescribed for the due performance of the contract;

27. "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;
28. "Pre-qualification document" means the document including any amendment thereto issued by a Port, which sets out the terms and conditions of the pre-qualification bidding and includes the invitation to pre-qualify;
29. "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 Port, 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;
30. "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Non-consultancy services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Port and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
31. "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Port;
32. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Port's Documents relevant to the context (Codes, Manuals and Standard/ Model Tender Documents);
33. "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as

the case may be; the award of the procurement contract; execution of contract till closure of the contract;

34. "Procuring authority" means Kamarajar Port Limited;
35. "Procuring Entity" (including the term "Port", means all the departments/officers involved in one way or another, in various stages of the process, starting from need assessment to the closure of contract;
36. "Prospective bidder" means anyone likely or desirous to be a bidder;
37. "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;
38. "Rate contract " (or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or Port with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
39. "Registering authority" means an authority which registers bidders for different categories of procurement.
40. "Registered Supplier" means any supplier who is on a list of registered suppliers of the Port or a Central Purchase Organisation;
41. "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the Port 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;
42. "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 Port 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';

43. "Special Conditions" means Special Conditions of Contract, which override the General Conditions, also referred to as SCC.
44. "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
45. "Tender," "Tender Document," "Tender Enquiry" or "Tender Process": 'Tender Process' is the entire process from the publishing of the Tender Document till the resultant award of the contract. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc. and including various terms prevalent for such documents) published by the Port to invite bids in a Tender Process. The Tender Document and Tender Process may be generically referred to as "Tender" or "Tender Enquiry", which would be clear from context without ambiguity.
46. "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.

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KAMARAJAR PORT LIMITED

NON-CONSULTANCY SERVICES MANUAL

Section-1

Chapter-1

Introduction

1.0. Introduction to Procurement of Non-Consultancy Services

1.1. Procurement Rules and Regulations; and this Manual

1. Ports spend a sizeable amount of their budget on procurement of services (consultancy and non-consultancy services – both inclusively called services) to discharge the duties and responsibilities assigned to them.
2. Ports have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available on Government e-Marketplace (GeM). These powers have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017.
3. To ensure that these procurements are made by following a uniform, systematic, efficient, and cost-effective procedure and also to ensure fair and equitable treatment of suppliers, there is a hierarchy of statutory provisions, rules, financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government about public procurement (hereinafter referred as 'Procurement Guidelines').
4. There is no law exclusively governing public procurement. However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6 to 9; Delegation of Financial Powers Rules (DFPR); Government orders regarding purchase preference/ restrictions like Public Procurement (Preference to Make in India), Order 2017, facilities to Micro and Small Enterprises and Startups, Restrictions on Entities from a Class of Countries (Rule 144 (xi), GFR 2017) etc., to increase transparency and objectivity in public procurement.
5. This Manual is intended to draw attention to basic norms and practices governing public procurement.

1.2. Clarification, Amendments and Revision of this Manual

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

1.3. Applicability of this Manual

1. "Services" are defined by exclusion as any subject matter of procurement that cannot be classified as goods or works, except those incidental or consequential to the service, and includes two distinctly separate categories - 'Consultancy Services' and 'Non-consultancy Services' (hereinafter referred as NC Services).
 - i) Any service that meets the criteria mentioned in sub-para 3 below is identified as 'Consultancy Service'.
 - ii) NC Services are identified by exclusion as any service that cannot be classified as 'Consultancy Service', except those incidental or consequential to the NC service.
2. This manual is applicable to procurement of "Non-consultancy Services" as defined below. Any circumstances which are not covered in this manual for procurement of non-consulting services, the Port may refer to Manual for Procurement of Goods (2024 version)
3. "Consultancy services" (Rule 177 of GFR 2017) means any subject matter of procurement (which as distinguished from 'Non- Consultancy Services') involves primarily non-physical, project-specific, intellectual and procedural processes where outcomes/ deliverables would vary from one consultant to another (other than goods or works, except those incidental or consequential to the service), and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a Port but does not include direct engagement of a retired Government servant.

These Services typically involve providing expert or strategic advice e.g.,

- i) Management consultants,
 - ii) Policy consultants,
 - iii) Communications consultants,
 - iv) Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.
4. Non-consultancy services (which as distinguished from 'Consultancy 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.

Non-consultancy services may include:

- i) transport services;
 - ii) logistics;
 - iii) clearing and forwarding;
 - iv) courier services;
 - v) upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works etc.);
 - vi) drilling,
 - vii) aerial photography,
 - viii) satellite imagery,
 - ix) mapping, and similar operations etc.
5. The term “Outsourcing of Services” implies deployment of outside agencies on a sustained long-term (for one year or more) for performance of NC services which were traditionally being done in-house (auxiliary and support services) by the employees of Port (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). There may be Human Resources and administrative issues involved in ‘outsourcing’ which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, NC services also include procurement of one-off services which do not extend over long-term.
6. These guidelines would continue to apply if the Port
- i) outsources the procurement process or
 - ii) bundle the procurement process with other contractual arrangements or
 - iii) utilise the services of procurement support agency or
 - iv) procurement agents to carry out the procurement on their behalf.
 - v) But these procurement guidelines would not apply to procurements by the Ports for their own use from their subsidiary companies in which they have controlling share.
 - vi) GePNIC portal (eproc.gov.in), GeM portal and various such platforms of different Organisations carry out large proportion of Public procurement, hence the procedures of such platforms should generally conform to these ‘Procurement Guidelines’.
7. However, by a general or special notification, the government may permit certain ‘Procuring Entities’ mentioned in sub-para above, considering unique conditions under which they operate, for all or certain categories of procurements, to adopt detailed approved guidelines for procurement, which may deviate in some

respects but conform with all other essential aspects of 'Procurement Guidelines'.

8. For procurements financed by Loans/Grants extended by International Agencies:

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

1.4. Categorisation of procurements

1. Categorisation of Procurements helps in preparing guidelines for Procurements and Model Tender Documents, which cater to peculiar contractual conditions of the categories of procurements. Following are the categories of procurements:
 - a) Goods,
 - b) Services : i) Consultancy Services and ii) Non-consultancy services (NC services),
 - c) Works
2. Normally such categorisation is clear as per their definition and procurement should be done accordingly, following the relevant guidelines and Model Tender Documents.
3. Procurement in cases of doubts about categorisation may be done as follows:
 - a) The boundaries between such categorisation may not be clear cut and may overlap. It may neither be possible nor necessary to precisely distinguish between the categories in overlapping areas. In case of blurred border-lines and grey areas, a simpler procedure of procurement should be followed. In case of doubt between:
 - i) Goods and works/ NC services/ consultancy, it should be processed as procurement of goods.
 - ii) Works and NC service/ consultancy, it should be processed as procurement of works.
 - iii) Non-consultancy and Consultancy services, it should be processed as procurement of non-consultancy services.
 - b) There may be composite contracts involving mixed elements of Goods, Works, and NC/ Consultancy Services. For example, In procurement of complex services (Consultancy or Non-consultancy), some works, and supply of Goods may be incidental to the assignment. The relationship of primacy between the Service element and the Works/ Goods element may be examined, irrespective of the relative values.

- i) If the main intention is procurement of services with works/ goods being incidental to it, it may be processed as such.
 - ii) If the primary intention is procurement of Works/ Goods with Service element being incidental, then it should be processed as procurement of works/ Goods (as the case may be).
- c) Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:
 - i) bespoke software development;
 - ii) cloud based services and
 - iii) composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth, and operation/maintenance of the system for a define period after go-live etc.
- d) If the NC services
 - i) involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of Works.
 - ii) In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled as Procurement of Goods rather than procurement of services.
- e) It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service.

In essence, if the intellectual and advisory part of services dominates (and the physical part being incidental), the selection needs to be dealt with in Consultancy mode. For example, if the task is looking at the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

1.5. Authorities Competent to incur Expenditure on a Procurement

1. The first step in procurement to procure goods, services or works involves a formal decision to procure something along with the exact or approximate expenditure to be incurred. A Competent authority which is competent to incur expenditure may accord administrative sanction/ approval to incur expenditure on a specific procurement in accordance with the Delegation of Financial Rules. Port may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 1.
2. Being a decision with a financial bearing and hence invariably requires consultation with the Head of Finance Department.
 - a) **Normal Procedure:** The concurrence of the Finance department shall be required on all procurement matters, except for matters where re-delegation has been done within the limits permissible under the rules/ general orders/ general instructions.
 - b) **Special Procedure:** The Port may, with the prior concurrence of the Board, lay out the types/ classes of cases where the Finance department consultation would be required which may be in terms of threshold financial limits, stages in procurement or types of procurement and contracts viz. consultancy, goods and works contracts etc. or any permutation thereof.
3. In all procedures, payments under approved contracts shall not require consultation with Finance except in cases where the payments are in relaxation/variation to approved contract conditions.

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

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

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

1.7. Fundamental Principles of Public Procurement

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

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

(Detailed principles are given in Appendix-NCSM-S2/A1)

1.8. Public Procurement Infrastructure at the Centre

1.8.1. Procurement Policy Division

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

1.8.2. Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed, and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ports. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ports to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid (Rule 159 of GFR 2017). It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.9. Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to

bidders on the grounds of promotion of locally manufactured goods or locally provided services. (General and Financial Rules, 2014, Rule 153).

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

1.9.1. Public Procurement Policy for Micro and Small Enterprises (MSEs)

1. From time to time, the Government of India lays down procurement policies (Rule 153 (ii) of GFR 2017) to help inclusive national economic growth by providing long-term support to small and medium enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website (<http://dcmsme.gov.in/pppm.htm.aspx>).
2. Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
3. The Policy is applicable to all the Central Government Ministries / Departments / CPSUs/Ports, irrespective of the volume and nature of procurement. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
 - a) To reduce transaction cost of doing business, MSEs are facilitated by providing them tender documents free of cost, exempting from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy.
 - b) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
 - c) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty-five) per cent of total tendered

value. The 25 (twenty-five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

- d) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent [that is, 16 (sixteen) per cent out of 25 (twenty five) per cent] is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three percent earmarked to women entrepreneur will be met from other MSEs.. MSEs would be treated as owned by SC/ ST entrepreneurs:
 - i) In case of proprietary MSE, proprietor(s) shall be SC/ ST;
 - ii) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
 - iii) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
4. If subcontract is given to MSEs, it will be considered as procurement from MSEs.
5. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs
6. To develop MSE vendors so as to achieve their targets for MSEs procurement, Port shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Ports have to take the following steps:
 - a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Port for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).

- d) A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
7. Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
8. This Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
9. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from CPSUs for exemption from 25 (twenty-five) percent target on a case-to-case basis and monitor achievements under the Policy.
10. To monitor the progress of procurement by CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh' (<https://sambandh.msme.gov.in/PPPIIndex.aspx>). Portal on 8th December 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
11. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.
12. Office of Development Commissioner (Micro, Small & Medium Enterprises) issued FAQs (Issued Vide OM F.No 1(3)/2018-MA, Part III dated 25.03.2022) on Public Procurement Policy for MSE Order, 2012, placed at Appendix-9 of Section-2.
13. In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all nontax benefits of the category (micro or small or medium) it was in before the re-classification, for a period of three years from the date of such upward change. (Notified by MSME Ministry vide S.O. 4926(E) dt 18/10/2022)

1.9.2. Procurement 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 for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order

2017 (Latest revision to the Order notified vide OM 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 in Appendix-NCSM-S2/A2

1.9.3. Restrictions/ Prior Registration on Entities from a Class of Countries:

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

“Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/ or screening, on procurement from bidders from, or bidders having commercial arrangements with an entity from, a country or countries, or a class of countries, on grounds of Defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.”

2. Detailed provisions in this regard have been notified by the Department of Expenditure's OM No. F.7/10/2021-PPD (1) dated 23.02.2023, which are given in Appendix-NCSM-S2/A3

1.9.4. Support to Start-up Enterprises

1. Definition of Start-up Enterprises

- a) As defined by DPIIT, an entity shall be considered as a 'Start-up':
 - i) Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India, and
 - ii) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees, and
 - iii) The entity works towards innovation, development or improvement of products or processes or services or a scalable business model with a high potential for employment generation or wealth creation.
- b) Provided that an entity formed by splitting up or reconstructing an existing business shall not be considered a 'Start-up'.
- c) A Start-up so identified under the above definition shall be required to obtain and submit along with his bid a certificate of an eligible Start-up from the inter-Ministerial Board of Certification to obtain support.

2. Support to Start-ups

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

- a) Exemption from submission of Bid Security: Such Start-ups shall be exempted from payment of Earnest Money.
- b) Relaxation in Prior Turnover and Experience: The Port reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises recognized by Department for Industry & Internal Trade (DPIIT), subject to meeting of quality & technical specifications. Startups may be MSMEs or otherwise. The decision of the Port in this regard shall be final. (Rule 173 (i) of GFR 2017).
- c) However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where Port may prefer the vendor to have prior experience rather than giving orders to new entities (Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016).

1.10. When is Procurement of Non-Consultancy Services justified

In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Port to procure/ outsource NC services (i.e. auxiliary and support services). Approval of the competent authority should be obtained before engaging service providers. Justification is needed for Procurement of Consultancy Services on consideration of:-

1. Economy, speed, and efficiency in relation to additional requirement/ commitment/ usage of;
 - i) Staff/ Management/ Organization;
 - ii) Technological and Material Resources;
 - iii) Money, and
 - iv) Time/ Speed of execution.
2. An administrative policy decided by the Port to outsource specific (or class of) services;

1.11. Principles for Public Procurement of Non-Consultancy Services

1. Other principles of Public Procurement as mentioned in 1.7 above are also equally applicable to Procurement of Non-consultancy services. To ensure value for money during procurement of Non-consultancy services, the following additional principles shall be considered:
 - a) Services to be procured should be justifiable in accordance with Para 1.10 above;

- b) Terms of Reference (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Port;
- c) Equal opportunity to all qualified service providers to compete should be ensured;
- d) Engagements should be economical and efficient. (Rule 182 of GFR 2017);
- e) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and; (Rule 179 of GFR 2017)

1.12. The Law of Agency – applicable to Procurements

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

1.13. Public Procurement Cycle in Consultancy Services

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

1. Need Assessment:
 - a) Preparation of Procurement Proposal (Concept Paper) and obtaining in principle approvals;
 - b) Preparation of the Services and Activities Schedule, cost estimate and seeking administrative and budgetary approval;
 - c) Developing a Procurement Plan
2. Bid Invitation Process: Preparing tender documents, publication, receipt and opening of bids;
3. Bid Evaluation and Award of Contract:
 - a) Preliminary Examination and Evaluation of technical proposals: consideration of quality;
 - b) Evaluation of financial proposals;

- c) Selection of winning proposal; Negotiations and award of the contract to the selected firm; and

4. Monitoring of Contract Execution.

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

1.14. Nomenclature Conundrum

1. There is no standardised nomenclature in Public Procurement in India, and a mix of American, European, and British/ Indian nomenclature has become common. 'Tender' is taken to mean (i) 'Tender Document' or 'Tender Process' as well as (ii) the 'Bid' submitted by the 'bidders.' The Tender Document floated by Port is also called a Bid (or Bidding) Document. Similarly, participants in a 'tender' are alternatively called bidders and tenderers. This duality is reflected in "Notice Inviting Tenders' and 'Instructions to Bidders' etc.
2. The term 'Tender' for 'Tender Document' (document prepared and published by the Port, instead of bid/ bidding document) or 'Tender Process' and Bid for the 'bid' submitted by the 'bidders' and hence 'bidder' is used instead of tenderer. Other nomenclature used in this document is for not disturbing the nomenclature (e.g., Pre-qualification Bidding) embedded in the CPPP or GeM portals.

Chapter-2

Need assessment and Procurement Planning

2.1. Need Assessment

1. A critical part of the procurement of Non-Consultancy Services process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the function that an Indent serves in procurement of Goods). The authority in the User/Proponent department initiating the procurement proposal shall first determine the need (including anticipated quantum) for the subject matter of the procurement. Purpose/ Objective Statement of Services, Service Outcome Statement, and justification for the procurement of Consultancy Services are important parts of the procurement proposal.
2. Services and Activity Schedule containing Service Outcomes, Description/ Scope of Services, Quantum and Length (Duration/ Frequency/ Shifts) of activities is of fundamental importance in ensuring value for money, transparency, competition, and level playing field in procurement of NC Services. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

2.2. Process in Procurement Proposal

2.2.1. Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared (Please see a suggested format in Annexure-4: Format of Procurement Proposal). It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User/Proponent should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the assignment and justify the procurement based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the service providers should also be clearly identified at this stage. Justifications for procurement of Non-Consultancy Services as given in para 1.10 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Services and Activities Schedule for non-consultancy services is drawn up. A procurement proposal should contain:

1. **Purpose/ Objective Statement of Services:** "Purpose/ Objective Statement of Services" should be prepared by the user. One of the important contents of this statement is description of service to describe the subject matter of procurement

which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit-in with short-term and strategic goals of Port. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic but is a necessary and critical first step in properly designing a procurement proposal.

2. **Service Outcome Statement:** Once the "Purpose/ Objective of Services" has been clearly defined, the next step is to formulate a 'Service Outcome Statement'.
 - a) This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services, as well as the expected Time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organization).
 - b) At this stage, it is not necessary to go into details of all the activities required to achieve the service outcomes, but it should list at least the broad activities, would help in putting a rough estimate to the cost of services.
 - c) A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by the Service provider and the time-frame within which the output needs to be received by the user.
 - d) The estimated cost is needed to ascertain the level of approval necessary as per SoPP.
3. **Justification for the procurement of Services:** The Concept Paper/ Procurement proposal should analyse the capabilities/ capacities required to carry out the services. It should also analyse the available in-house capabilities/ capacities and compare these with the ones required for the assignment. Based on this assessment the Procurement should be justified.

2.2.2. In-principle Approval for initiating procurement of Services

Based on the justification contained in the Procurement Proposal, in-principle administrative approval and budgetary sanction for initiating procurement of such services should be accorded by the Competent Authority as laid down in SoPP. Further stages may be proceeded with, only after such approvals. (Rule 181 of GFR 2017)

2.3. Developing a Procurement Plan

2.3.1. Planning the Procurement

1. The Non-Consultancy Services may be part of a larger project/ works in which there be other components of work, Goods or Consultancy/NC services. Once a project or a program is identified, the Port needs to develop synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different

components including this NC Service, adoption of the most appropriate method of selection and type of contract and ensuring that selection of service provider is initiated and completed in a timely manner to meet the overall requirements of project implementation.

For example, if a service provider is required for housekeeping services for a hostel still under construction, the entire sequence of preparation of feasibility report, detailed design and bidding document, time required for inviting bids for construction work, and award of contract has to be considered so that the housekeeping service provider is mobilised at the right time when the hostel is ready for occupation. Procurement planning is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations.

2. **Packaging, Bundling and Slicing:** The Port shall normally neither package nor divide its procurement or take any other action to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand (Rule 157 of GFR 2017). Provided that in the interest of efficiency, economy, timely completion or supply, wider competition, or access to MSEs, the Port may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms; effective competition for the type and size of the contract; and access to MSEs.

For example, for a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works or there are services which are a mix of consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate contracts for each category of procurement. In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations;

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

4. **System of Tendering and Mode of procurement:**
 - a) Selection of a system of tendering (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
 - b) Select the mode of procurement (open tenders, limited tenders, single tenders, and so on);
5. **Time Frame:** Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or tender documents. The Port should endeavour to adhere to the time limit so decided and record reasons for any modification of such limits; and
6. **Annual Procurement plans:** Integrated annual procurement plan should be prepared for services for the ensuing financial year based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the Port and the market and to co-ordinate matching procurements of Services for a project.

2.3.2. Need assessment - Risks and Mitigations

Risk-1

Need is either artificially created or exaggerated, with the intention to channel benefits to an individual or an organisation. For example, demand is created for a good that is not needed simply to benefit the company's owner.

Mitigation-1

Keep records and involve stakeholders: Records of decision making, and data used should be kept. Involve procurement and finance functions at this stage also. End user and stakeholder consultations should be part of the process.

Risk-2

Delays in Assessment of Need and generation of Purchase Proposal for Procurement may lead to shortcut procurement procedures that dilutes transparency and prevent achievement of value for money. It may also lead to delays in delivery of goods.

Mitigation-2

Need assessment should be done sufficiently in advance of the time when goods are required. In case of urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.

Risk-3

The estimate of the costs may be inadequate. This may lead to inadequate response from the bidders and may delay finalisation of procurement. It may also adversely affect the quality of supplies.

Mitigation-3

Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.

Risk-4

Need Description/ Specifications/ Activity Schedule are disproportionate to the need identified or made to tilt in favour one or a group of vendor(s) or contractor(s) to artificially restrict competition.

Asymmetric dissemination of vital need information: Dialogue for determining solutions available in the market is held only with selected prospective bidders, giving them undue advantage in preparing for the bidding. Selected prospective bidders get access to inside information not disclosed or disclosed late to others.

Mitigation-4

Use a formal market discovery tool: Pre-bid conference and/ or well publicised EoI may be used for discovery of the market. Otherwise, encourage and invite comments on the technical and commercial conditions in the tender document or hold pre-bid conference.

Chapter-3

Preparation of Services and Activities Schedules

3.1 Services and Activities Schedule

1. Services and Activities Schedule is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the Service Provider once a need has been identified. It explains the background and context, purpose/ objectives of the services, scope, quantum, duration/ frequency of activities/ tasks to be performed, respective responsibilities of the Port and service provider, expected outcomes, and deliverables of the Service.
 - a) Services and Activities Schedule is important for an understanding of the service requirement and its correct execution to ensure that the outcomes of the service are achieved.
 - b) It reduces the risk for the Port of unnecessary extra work, delays, and additional expenses. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract execution.
 - c) Hence Services and Activities Schedule should be comprehensive and unambiguous.
 - d) The objectives of the Services and Activities Schedule are:
 - i) To provide sufficient information on the quantum, scope, duration/ frequency and timelines of Services to be performed to enable bids to be prepared efficiently and accurately; and
 - ii) When a Contract has been entered into, to provide a priced Services and Activities Schedule for use in the periodic valuation of Services executed.
 - iii) Besides detailing the activities, quantum and time frame, Services and Activities Schedule should contain the following sections also:
 - a) **Background:**
 - i) Port's organisation and Project background;
 - ii) Purpose and Service Outcomes Statement;
 - iii) Short Description and Scope of Services (including any incidental works/ goods) that would help the bidders understand the service requirement.
 - iv) Contract period (and provision of extension, if any), duration/ frequency/ timeline of outcomes/ deliverables;

- v) Type of Contract/ BOQ ([Time-based, Unit-Rate, Indefinite delivery, Lumpsum or Percentage-Based)
- vi) Expected requirement of resources: Man-power; Materials; Equipment;
- vii) Facilities such as office space, office machines, utilities, local services, etc., which would be provided to the Service Provider by the Port;
- viii) Insurances required if any;
- ix) Statutory and Contractual obligations to be complied by the Service Providers
- x) Institutional and organisational arrangement for Services (Counterpart Contract Management Team, Chain of Command, Interim/ ultimate beneficiaries/ stakeholders of Services; and
- xi) Procedure for review of the Service delivery after award of contract, including Service Level Agreement, if any

b) Description of Services:

A brief description of service required is important information that would help the bidders understand the service requirement. It should cover background about the Port's organisation and about the project/ service. The Purpose and Service Outcome statement should be included in the description of services.

c) Services and Activities Schedule:

In order to attain objectives of the Service and Services and Activities Schedule, Services should be itemized in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost.

- i) There may be more than one Schedule of Services based on grouping similar services in one Schedule.
- ii) Each Service should describe and should be broken down into discrete activities required to deliver the service.
- iii) The description/ Scope of Service and Activities should indicate what is (and more important – what is not) included in the scope and conditions under which Services are to be performed.
- iv) Consistent with these requirements, the layout and content of the Services and Activities Schedule should be as simple and brief as possible.

- v) All information relevant for the bidder to quote a price may be included e.g. - the location, frequency/ shifts/ length and quantum and time-frame/ duration of completion of activities to be performed.
- vi) In Services and Activities Schedule containing scores of items, evaluation can be simplified if the system used in Works contracts is borrowed, if feasible, where Schedule of rates (SoR) for each activity is specified in the bid documents by the Port and only percentage +/- above the SoR (separately for different Schedules or combined) is asked to be quoted by the bidders.

d) Performance Standards and Quality Assurance:

Performance standards/ Service Levels; functional/ materials/ technical specifications (indicate quantitative and qualitative parameters/ limits/ thresholds for performance) should be specified overall for the Service and for each activity, materials, tools and machines to be used in the activity. It should also include:

- i) Any reporting requirement, periodic meetings or other submissions
- ii) Any Service Level Agreement, if required, say for the outsourcing of services
- iii) Key Performance Indicators indicating how measurement, reporting, and tracking of performance parameters would be done for Quality Assurance and Monitoring of Service (Indicate procedure for quality assurance and monitoring of services, including institutional or third-party arrangements for this purpose)
- iv) Procedure for resolution and escalation procedures in case of deficiency in performance/ quality/ service levels.
- v) Method Statement (Sequencing and inter-dependencies of activities, methodology, Service Level Agreement, arrangements to ensure environmental, social, gender, health, and safety requirements if relevant. Method Statement must be supplemented by information in sub-schedules for Work Plan and
- vi) Schedule For forms of BOQ/ Contract based on input-admeasurement, Key Inputs deployments (Personnel Deployment, Critical Equipment Deployment and Critical Materials Deployment) may not be essential – but list these if required to achieve the performance standards and quality. If the service is not dependent on any of the key input, that may be omitted.

e) Labour/ Personnel Schedule:

If labour/ personnel are used in the activity, these may be quantified specifying place, shifts and frequency of utilization in the Services and Activities Schedule.

- i) In case any key professionals or Project Manager is required, their qualification and experience required may also be mentioned.
- ii) Any relievers and leave reserve for deploying the personnel should be included in the rate for such personnel and would not be separately payable.

f) Critical Material Schedule:

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

g) Critical Equipment Schedule:

Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ crafts, plant, and machinery etc) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc.

- i) It should be ensured that operators for such equipment must be mentioned as Labour/ Personnel Schedule.
- ii) In case of input Admeasurement, indicate only Critical Equipment (not others) required to carry out the Services to required standards and quality. Categorise the equipment – IT Equipment/ Motor Vehicles, Cranes, Washing Machines, vessels/ crafts, plant & machinery etc.
- iii) Give estimated number location-wise, category wise.
- iv) This schedule may not be essential for output-admeasurement BOQ/ Contracts, but list these if required.
- v) If the service is not dependent on Critical Equipment, this may be omitted.]

h) Statutory and contractual obligations to be complied with by the contractor:

Service provider mostly works within the premises of Port, along with staff of Port. Many services are subject to various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private

Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc.

- i) The bidder must have Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax).
- ii) Moreover, the Port may have its own regulation about safety, security, confidentiality etc.
- iii) All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder.
- iv) In case of security services contracts, the bidder must have the valid license to run the business of Private Security Agency in the state issued by the appropriate authority for operating Security Services.

i) Facilities and Utilities to be provided by the Port to service provider at Site:

It should be mentioned, if any facility/ utility (IT/ Communication Services, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service.

- i) In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges.
- ii) This aspect has a great bearing on the cost that will be quoted by the bidders.
- iii) This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately.
- iv) So great care and reality check is necessary, while preparing this Statement. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.
- v) It should be clearly mentioned that the service provider will not be allowed to use any of Port's facility/ area which are not listed in this section.

j) Institutional Arrangements and Procedure for Review of Work of service provider after the Award of Contract:

Institutional arrangements like the placement in a Department, name of project manager and chain of command for reporting may be specified.

Process of Review of Service Outcomes and deployment of personnel and resources should be clearly brought out.

A template for Services and Activities Schedule is given at Annexure 5.

3.2 Estimating Costs, Setting the Budget, and seeking Approval.

1. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Port's assessment of the resources needed to carry out the services: managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). Costs shall be divided into three broad categories. Profit element, Taxes and duties should be added to the estimated costs:
 - i) Remunerations for Personnel deployed;
 - ii) Reimbursable: (Travel, logistics, Consumable, Material, Tools, Hiring of third-party services etc.);
 - iii) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment etc)
2. **Rates:** Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services).
3. **Staff Costs:** The estimate of staff cost is based on an estimate of the personnel time (staff-months/ weeks/ days) required for delivering the services considering time required by each staff, his remuneration rate (or the minimum wage rate, if applicable), and the related direct cost component. In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances.

A mismatch between the cost estimate and the Services and Activities Schedule is likely to mislead service providers on the desired scope, quantum, and frequency of service required, and this could lead to serious problems during contract implementation.

3.3. Final Administrative and Budgetary Approvals

1. The Services and Activities Schedule shall be compatible with the available budget.
 - a) The most important step is to determine whether all tasks required to achieve the desired output have been included. The next step is to

determine whether adequate budget has been allocated to implement the services as proposed.

- b) Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable Services and Activities Schedule is formulated.
 - c) Competent Authority's approval may be taken for the Procurement before proceeding ahead.
 - d) After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the Competent Authority for inclusion in the Revised Estimate stage of Budget.
 - e) Procurement should be initiated only after such approvals and budgetary provisions.
2. Port may lay down a schedule of powers for administrative and budgetary approval of procurement proposals for services. Before granting such approvals, it should be certified that funds in the budget are available and liability for this procurement proposal is noted against the total available budget.
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Chapter-4

Participation of Bidders-Legal status

4.1. Eligibility Criteria for Participation in Tender Process

Normally participation in Tender Process should be open to all bidders. However, Port should lay down 'Eligibility' criteria, based on requirement of the procurement and Government Policies. 'Eligibility' and 'Qualification' criteria (Experience; Performance and Financial Capabilities), are entirely different criteria and should not be mixed up. 'Eligibility' criteria regulate the participation of bidders in the Tender process, while 'Qualification' criteria are for evaluation of bidders for award of the contract.

Bidder should meet the eligibility criteria as of the date of his bid submission (and should continue to meet these till the award of the contract) otherwise his bid would be rejected as non-responsive and would not be evaluated for award of contract.

Bidder shall be required to declare fulfilment of Eligibility Criteria in his bid document.

Some of the eligibility criteria is related to following issues (for details refer to relevant Model Tender Documents):

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

- ii) Bidders from specified countries having land borders with India (but not in development partnership with India) shall be eligible subject to certain conditions.

4.2. Legal Status of Bidders

4.2.1. Natural Persons

1. Individual consultants

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

2. Retired Government Servants

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

4.2.2. Private and Public Entities

1. Service providing Firms

The main source of service providers is Service Providing firms of diverse specializations that provide consultancy/service to clients. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at international level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

2. Non-governmental Organizations (NGO)

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

3. Specialized Agencies and Institutions

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

4.2.3. Association of several Bidders

1. Sub-contracting:

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

- d) The total value of the sub-contracting portion of services must not exceed the per cent of the contract price as specified in the Tender Document/ Contract (if not so specified 25 (twenty-five) percent).
 - e) Sub-contracting by the contractor without the approval of the Port shall be a breach of contract.
2. **Consortium of Service Providers:** In large and complex assignments service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons.
- a) Such an association may be for the long term (independent of any particular assignment) or for a specific assignment.
 - b) The consortium may take the form of a Joint Venture (JV). In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. The Port only deals with the lead member of consortiums for all the purposes.
 - c) Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). Maximum number of partners in JV shall be limited (say – three).
 - d) In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to meet (financial soundness) individually and separately.
 - e) In this case it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit in case of experience of particular consultancy and financial turnover, if any.
 - f) Usually JVs/Consortiums are not permitted in Non-consultancy services.

Chapter-5

Governance Issues in Procurement of services

5.1. Governance Issues

5.1.1. Standards (Canons) of Financial Propriety

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

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

- i) Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- ii) The expenditure should not be prima facie more than the occasion demands.
- iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- iv) Expenditure from public moneys should not be incurred for the benefit of a particular person or a section of the people, unless —
 - a) a claim for the amount could be enforced in a Court of Law, or
 - b) the expenditure is in pursuance of a recognized policy or custom.
- v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients.
- vi) While discharging the duties of financial concurrence of any public expenditure, such authorities subsequent to such decision, shall not be involved in any future financial/audit/payment responsibilities which may create conflict of interest.

5.1.2. Right to Information and Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo-motu or proactive basis and Section 4(2) and Section 4(3)

prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued "Guidelines on suo motu disclosure under Section 4 of the RTI Act" vide their OM No.1/6/2011-IR dated April 15, 2013. (<http://cic.gov.in/GuidelinesOnProActive.pdf>) The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

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

5.1.3. Code of Integrity for Public Procurement (CIPP)

Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Port and the bidders/ suppliers/ contractors/ consultants/ service providers involved in procurement process must abide by the Code of Integrity for Public Procurement (CIPP) (Details given in Appendix-NCSM-S2/A4).

- a) All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment).
- b) The bidders/ suppliers/ contractors/ consultants/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ consultants/ service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on. (Rule 175 of GFR 2017)

5.2. Integrity Pact (IP)

1. The Pre-bid Integrity Pact is a tool to help governments, businesses, and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.

2. Ministry of Finance, Department of Expenditure have mandated all the autonomous bodies to incorporate Integrity Pact (as per format in Annexure-13) depending on the nature of procurements/ contracts above a threshold value.
3. The nature of procurement and threshold of value is to be decided by the Ports with approval of the Board. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure. Detailed Integrity Pact provisions are given in Appendix-NCSM-S2/A5)

5.3. Development of New Sources and Registration

Empanelment/ Pre-qualification of Firms

Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification. Detailed Procedure is given in Appendix-NCSM-S2/A6)

5.4. Debarment of Suppliers

Registration of suppliers and their eligibility to participate in Port's procurements is subject to compliance with Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 specified the circumstances regarding the 'Debarment from Bidding' (Refer Appendix NCSM-S2/A7)

5.5. Enlistment of Indian Agents

Port if so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals (Rule 152 of GFR 2017)

5.6. Grievances and its Redressal

1. Any supplier, contractor, consultant or service provider that claims to have suffered, or is likely to suffer loss or injury, due to a breach of fundamental principles of procurement by the Port, may make an application for review of such decision, action or omission, within a period of five (10) days from the date of such decision or action, to the designated officer named in the tender documents in this regard (or the Head of the Port, if not so specified), specifying the ground(s) and the relevant clauses of the tender documents. This grievance redressal mechanism is apart from the Vigilance channel of complaints. Unsuccessful Bidders may seek de-briefing regarding the rejection of his bid, in writing or electronically, within 10 days of declaration of techno-commercial or financial evaluation results.
2. Only a directly affected bidder can represent in this regard:

- a) Only a bidder who has participated in the concerned procurement process i.e., pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
- b) In case 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;
- c) 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.
- d) Following decisions 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 tendering system;
 - iii) Choice of selection procedure;
 - iv) Complaints against specifications/ ToR/ Activity Schedule except under the premise that they are either vague or too specific to limit competition may be permissible.
 - v) Provisions limiting participation of bidders in the procurement process; in terms of policies of the Government.
 - vi) Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government
 - vii) The decision to enter into negotiations with the L1 bidder;
 - viii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
 - ix) Issues related to ambiguity in contract terms 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.
- 3. Within five working days of receipt of the complaint, the designated Officer shall acknowledge the receipt in writing to the complainant indicating that it has been received, and the response shall be sent in due course after a detailed examination. The redressal of the grievance must be completed within 30 (thirty) days of its receipt. The designated officer would call comments of concerned procurement officers and take a view about further processing of the grievance and may also decide whether the process of procurement should be put on hold for the time-being or not.

4. If the designated officer, on receipt of comments of relevant officer, finds complaint to have substance, appropriate and feasible remedial measure should be initiated. If the grievance is resolved or if the grievance is found to be unwarranted, the final decision shall be informed to the aggrieved party in writing after approval by the competent authority of the procurement.
5. If the grievance is not redressed within 30 days, or if the bidder or prospective bidder is aggrieved by the decision of the designated officer, the bidder or prospective bidder may file an application for redressal to the appellate authority mentioned in the tender documents (Head of Port, if not so specified) within a period of fifteen days thereafter.

5.7. Investigations of Serious Deviations from Procurement Guidelines

1. Suo-moto or based on representations from bidders, the designated officer (or appellate authority) may if he/she considers that an investigation is necessary or desirable for the purpose of preventing, investigating, or detecting serious deviations from procurement guidelines, appoint a person or persons at sufficiently higher level than the officers involved, to investigate any matter related to the conduct of any procurement proceedings, or the conclusion or operation of any procurement contract. The appointed Investigator(s) shall carry out the investigation and report the compliance to the procurement guidelines, to the appellate authority.
2. If the designated officer (or appellate authority) is satisfied that there has been a contravention of procurement guidelines in relation to any procurement proceedings or procurement contract, he may initiate such action as, in his opinion, is necessary to rectify the contravention, including:
 - a) Handing over the case for further investigation to CVO (or through CVO to CBI), if there are aspect, which require criminal/ police investigations.
 - b) Registration of FIR and instituting legal proceedings for prosecution in appropriate court of Law.
 - c) annulment of the procurement proceedings;
 - d) cancellation of the procurement contract, if legally feasible;
 - e) In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the conduct rules.
 - f) In case of complicity of any bidder is proved:
 - i) removal of concerned firm from list of registered firms
 - ii) debarment of the bidders, if warranted
 - iii) reporting the matter to Competition Commission of India (CCI), in case of anti-competitive actions by the bidder.

- g) If the grievance is due to inadequacy of procurement guidelines or due to lack of understanding of the staff, remedial action to address such lacunae may be initiated, without repercussion to the concerned staff.

5.8. Conduct of Public Servants in 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-1

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

Gifts: Gifts from suppliers/Contractors/Consultants/Service Providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.

Mitigation-2

Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.

Risk-3

Private Purchases from Official Suppliers/Contractors/Consultants/Service Providers : Procuring Officials may mistakenly consider it innocuous to seek

discounts in private procurements from suppliers/ contractors/ Consultants/ Service Providers having official dealings or its associates (especially against Rate Contract).

Mitigation-3

Public purchasers must not seek or accept special facilities or discounts on private purchases (particularly same items which are being ordered officially) from contractors, suppliers/ contractors/ consultants/ service providers (including Rate Contract holders) with whom they have official dealings.

Risk-4

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-4

Public purchasers must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/ service providers including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events from..

Risk-5

Conflict of Interest (COI), Code of Integrity for Public Procurement has a provision on Conflict of Interest – which inter-alia states:”

“... if the bidding firm or their personnel have relationships or financial or business transactions with any official of Port who are directly or indirectly related to tender or execution process of contract;”

Mitigation-5

a) Officers related to the tender or execution process would depend on the organisational structure and sensitivity of their role in procurement. It may cover key officials (and any external consultants/ advisors) involved in making a recommendation, various approvals, or making an important decision at any stage in procurement – i.e., during need determination/ indenting; Tender Document preparation/ preparation of comparative tabulation; Technical and Financial evaluation of Bids; negotiation/ signing of Contract; execution of contract; payments to the contractor.

b) Conflict of Interest can be in the nature of significant business interests, family relationship, regular social interactions, close personal friendships. A conflict of interest (actual, potential, or perceived) can arise when any senior executive (or team handling the bidding) at the firm bidding for the contract

(called firm's team) has such relationship/ transaction with officials (or their close relatives) mentioned in sub para-a) above.

Examples: Such official or his close family relative (parents/children/ their family, uncles/ aunts/ their family) has substantial business interests in the firm (say shares more than 0.1% of market cap, taken a loan/ financial obligation, availed hospitality – say, beyond the limits laid down in Code of Conduct of the organisation); have previously worked for the firm; or are close personal friend of the firm's team members or regularly (say, more than once in a quarter) interact socially (clubs, games, social associations) with them.

Resolution of COI: It shall be the responsibility of such officials to declare actual/ potential/ perceived COI to the Competent Authority, intimating either abandoning of potential/ perceived COI or else, requesting to be recused from association with the procurement process. Competent officer may evaluate the level of COI, and the sensitivity of function assigned to the official. He may either determine COI to be insignificant enough to influence the type of function performed by the official, or if COI or the type of function is significant, nominate any alternative officer to perform the function of this official.

Chapter-6

Bidding Design for Non-Consultancy Services

6.1. Admeasurement of Services

Non-consultancy services are bid and contracted on the total price (unit rate X quantum) of the services (of requisite performance standards) delivered. The quantum of services can be ascertained by either measuring the inputs deployed by the service provider or the output of services delivered.

6.1.1. Input Admeasurement

1. The quantum of services can be ascertained by measurement of the inputs (Personnel, Equipment, Materials, and miscellaneous inputs) deployed during a period (say per month) by the service provider.
2. The contract specifies the unit rate and the estimated quantum (per period – say per day/ month) of various inputs required to be deployed to deliver the required quantum of services (of requisite performance standards). The contract would also specify the service charges (including profits, overheads, etc.) and taxes over and above such input unit rates. The financial evaluation is based on the total price of the indicated quantum of various inputs at the contracted unit rate plus service charges and taxes.
3. Input admeasurement requires more vigilant and constant monitoring of inputs deployed. The Port must also monitor the performance standards, methodology employed and productivity of inputs to ensure value for money.
4. Input admeasurement is frequently used in Time-based and Indefinite Delivery type of contracts (as described in following paras) for Services like - upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works, etc.), Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services etc.

Input Admeasured Contracts - Risks and Mitigations

Risk-1

The quality and Scope of the Output/ deliverables is not linked to the payment. There may be tendency for the service provider to ignore the quality and scope of the services. Disputes may arise due to different possible interpretations of quality and scope of contract.

Mitigation-1

The contract should include provision for evaluation of quality, methodology and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates. Therefore, Service Level Agreement (SLA) becomes very important in such contracts.

Risk-2

Productivity of inputs deployed is not linked to the payment. There may be tendency for the service provider to use paid staff in a dilatory and un-productive manner. This may lead to Time and Cost over-runs.

Mitigation-2

Such contracts need to be closely monitored and administered by the 'Port' to ensure that the progress of contract is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the contract during the period.

- i) It may be worthwhile to lay down productivity linkage between quantum of output of services to input deployed in a period (say cleaning of a quantum of area per day per cleaner deployed), as part of Performance Standards.
- ii) A system of monthly reporting of payouts and quantum of work achieved by the service provider to Competent Authority should be instituted to enable supervision.
- iii) Such contracts should include an upper limit of total payments to be made to the service providers for the contract to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, Competent Authority should review justification for extension of the contract.

6.1.2. Output-Admeasurement

The quantum of services can be ascertained by measurement of the quantum of outputs delivered of the required performance standards (output admeasurement – numbers, length, area, volume, weight, value etc., or a combination thereof), say the area of office cleaned or tonne-Kilometre of transportation or value of goods inspected. Since contracts based on Out-put admeasurement specify unit rate of service output, it is referred as Unit-Rate contract also.

1. The contract specifies a unit rate of the output of services, and the financial evaluation is done based on the total price of the indicated quantum of service at the contracted unit rate plus taxes. In actual practice, this could be more complex – as in taxi hiring for 8 hours with a maximum kilometre of 250 Km included in the price, but every additional Km/ hour may be charged extra. There may also be additional charges for night duty, etc.

2. Output admeasurement contracts are simpler to administer since the Port will only ascertain performance standards and the quantum. It need not monitor the inputs deployed and the methodology employed. Therefore, wherever feasible, output admeasurement should be the preferred choice.
3. However, in many services, it may be part of the quality assurance plan and Service Level Agreement (SLA) to ensure that specified quantum of inputs is deployed for the services, although payments are still based on output admeasurement.
4. Depending on the situation, output admeasurement may be suitable mainly for Lump-sum and Percentage Based types of contracts (as described in following paras) and in special circumstances for Time-based and Indefinite Delivery type of contracts. Output admeasurement may be suitable for Services like - transport services, logistics, clearing and forwarding, courier services, drilling, aerial photography, satellite imagery, mapping, and similar operations.

Output Admeasurement Contracts - Risks and Mitigations

Risk-1

Insufficient Deployment of Resources: Service Provider may not deploy sufficient resources which may lead to poor quality and Time Over run.

Mitigation-1

Stipulate in the Tender Document that quantum of input deployments (Personnel, equipment, materials, etc.) shall also be quoted but shall be used only to monitor performance standards.

Risk-2

The quality of the Output/ deliverables is not linked to the payment. There may be tendency for the service provider to cut corners on quality of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of Output/ deliverables.

Mitigation-2

Such contracts should be used mainly for contracts in which the quality and scope of the required output of the service providers are clearly defined and are measurable. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables. It's important to include a Service Level Agreement in such contracts.

Risk-3

Time over-run: As time is not linked to the payment. There may be tendency for the service provider to save on deployment of resources which may result in time-over-run.

Mitigation-3

While the payments are not linked to time, the contract should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.

Chapter-7

Types of Contracts

7.1. Types of Contracts

1. There various basis for linking payments to the performance of a quantum of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and financial evaluation is based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of requirement. BOQ of the financial bid is designed specifically for each type of contract. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes, and non-performance/ failure of the contract.
2. In following paras, criteria for adoption along with risks and mitigation measures are suggested for each type of contract. Normally used types of contracts for Non-consultancy Services are:
 - a) Lump sum contract;
 - b) Time based contracts;
 - c) Percentage contract;
 - d) Indefinite delivery contract.

7.2. Lump Sum Contract

1. The lump sum (firm fixed price) contract is the simpler type of contract and wherever feasible; the Port shall use this form of contract. Service Provider's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. This Type of Contract is based on output admeasurement. Schedule of Requirement shall indicate the scope and quantum of Services required.
2. Lump sum service contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ Services delivered. Bidders quote lump sum price for the required quantum of services. They may also be asked to quote unit rate for the service, to be used in case of variation etc.
3. Schedule of Requirement shall indicate the quantum of the Services, its performance standards, and the timeline/ milestones of its delivery. Contract may specify parts of payments to be released at specified timelines/ milestones.
4. In view of Risks mentioned below this type of contracts not many services are amenable to lump-sum type of contracts. Depending on the situation, such

contracts may be used for transport services, logistics, clearing and forwarding, courier services, drilling, aerial photography, satellite imagery, mapping, and similar operations, and so forth.

5. **Lump Sum Contracts - Risks and Mitigations:** Please see Risk and Mitigations in Output admeasurement contracts.

7.3. Time-Based Contract

1. In Time-based (unit-rate) contracts, payments are based on agreed unit prices. This Type of Contract can be based either on input (more often) or output admeasurement. Payments are usually released every month for the quantum of inputs/ output actually performed. This type of contract is appropriate when Lump sum contract is not feasible.
2. In input admeasurement Time- based contracts, Schedule of Requirement shall indicate the quantum, performance standards, frequency and duration of the Services/ Activities and also key inputs estimated to be required per month (Personnel, Equipment, Materials and Miscellaneous) for performing the Services/ Activities to the stipulated performance standards and quality. It shall also indicate the contract Period (one year, unless otherwise stipulated) of service required.
 - a) The Bidders shall quote the unit rates of inputs and the quantum of inputs per month he considers necessary to perform the Services/ Activities to the required performance standards and quality.
 - b) He shall also quote service charges and taxes over and above the cost of inputs.
 - c) Financial evaluation shall be based on the total cost of all inputs (plus service charges and taxes) over the Contract Period.
3. In output admeasurement Time-based contracts, Schedule of Requirement shall indicate the quantum of the Services, its performance standards, and the timeline/ milestones of its delivery. It shall also indicate the contract Period (one year, unless otherwise stipulated) of service required. Bidders shall quote per unit rate of the outputs of services, timelines/ milestones, and taxes.
4. As differentiated from the Indefinite Delivery type of contracts (discussed below), Time-based contracts are suitable for services which are continuously needed but it is difficult to specify the scope/ length of services or the quantum of individual activities either because the inputs required for attaining the objectives of the requirement is difficult to assess or because the services are tied up to contracts/ activities by others for which the completion period may vary. While Indefinite Delivery type of contracts is suitable for services which are infrequently needed, and the quantum of services is unpredictable, but service provider is needed to be always on beck and call.

5. Because of risks and mitigations mentioned below, this type of contract is especially suitable for outsourcing of services e.g. upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works, etc.), Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management/ housekeeping Services for Hostels and Guest Houses, errand/ Messenger Services, transport/ logistics/ clearing and forwarding, courier services, etc.
6. **Time-Based Contracts - Risks and Mitigations:** Please see Risk and Mitigations in Input and Output admeasurement contracts respectively.

7.4. Percentage (Success/ contingency Fee) Contract

1. Percentage (Success/ Contingency Fee) contracts directly relate the fees/ service charge paid to the service provider to the estimated or actual value of assets/ transactions to be handled – e.g., project cost, or the cost of the goods procured or inspected. This Type of Contract is based on output admeasurement (value of assets/ transactions handled). The payment is made based on the value of assets/ transactions handled during the period.
2. Schedule of Requirement shall indicate the estimated value of assets/ transactions to be handled as well as the contract Period (one year, unless otherwise stipulated) over which such volume shall be availed. However, there shall be no firm commitment to avail the entire value of transactions within the contract period. The final selection is made among the technically qualified service providers who have quoted the lowest percentage (as service charge) while the notional value of assets/ transactions to be handled is fixed.
3. Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural/ engineering services; procurement and inspection agents.
4. **Percentage Contracts - Risks and Mitigations:** Please also see Risk and Mitigations in Output admeasurement contracts.

Risk-1

Bias against Economic solutions: Since the percentage payment is linked to the total cost of the transactions, (say architectural or engineering or procurement services) percentage contracts implicitly lack incentive for economical transactions and are hence discouraged.

Mitigation-1

Therefore, the use of such a contract for architectural or engineering or procurement services is recommended only if it is based on a fixed target cost and covers precisely defined services.

7.5. Indefinite Delivery Contract – Output or Input Admeasurement

1. These contracts are used when Port need to have "on call" specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. The Port and the firm agree on the unit rates to be paid. This Type of Contract can be based either on input (more often) or output admeasurement. Payments are made on the basis of the quantum of service or inputs actually utilised during the period.
2. The service provider shall be selected based on the total price (unit rate multiplied by indicative volume) of such Services/ Inputs (including service charges and taxes).
5. Schedule of Requirement shall indicate only a tentative estimate of the volume of required outputs/ inputs as well as the contract Period (one year, unless otherwise stipulated) over which such volume is likely to be availed. The Services shall be availed on-call as and when needed by the Port without any commitment regarding the volume of services.
6. In case of output admeasurement contracts, if expressly stipulated in the Tender Document, quantum of Input deployments (Personnel, equipment etc.) shall also be called for but shall be used only to monitor performance standards. Similarly in case of input admeasurement contracts, quantum of services to be delivered per quantum of inputs deployed per day/ month may also be called for to evaluate the quality and productivity of deployed inputs.
7. Due to risks and mitigations discussed below, Indefinite Delivery contracts are commonly used to retain "advisers" or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.
8. **Indefinite Delivery Contracts - Risks and Mitigations:** Please also see Risk and Mitigations in Input and Output admeasurement contracts respectively.

Risk-1

Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.

Mitigation-1

The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization.

Such contracts need to be closely monitored and administered by the 'Port' to ensure that there is no indiscriminate or unwarranted usage, and a maximum contract value may be laid down to keep control over usage and approval of Competent Authority may be obtained to extend it beyond such limit.

A system of monthly reporting of payouts and quantum of work achieved by the service provider to Competent Authority should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which the report may be required to be sent to a level above Competent Authority.

Chapter-8

Systems of Selection

8.1. Systems of Selection of service providers

1. The relative importance of Quality and Price aspects may vary from service to service depending on complexities/ criticality of quality requirements, internal capability of Port to engage and supervise the contract, as well as the value of procurements. Hence different systems of selection of service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects.
 - a) Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed contract.
 - b) The selection method chosen depends to some extent on this assessment. Selection of system of selection also should consider the likely field of Bidders.
2. The nomenclature of various selection methods below is in line with generally prevalent practice:
 - a) Price based System - Least Cost Selection (LCS);
 - b) Quality and Cost Based Selection (QCBS);
 - c) Direct Selection: Single Source Selection (SSS)
3. Unlike Procurement of Consultancy Services, procurement of Non-consultancy services is done by a simpler process akin to those of procurement of Goods and Works.
 - a) In procurement of Non-consultancy services normally system of selection used is Price Based – Least Cost Selection (L1) as in procurement of Goods/ works for technically responsive offers.
 - b) Under very special circumstances Single Source Selection may also be used.
 - c) However, QCBS method of selection has been allowed to be used for procurement of Non-consultancy Services, for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

8.2. Price based System - Least Cost Selection (LCS)

1. In this method of selection, service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark (normally 75 (seventy-five) out of maximum 100 (hundred)) and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes.
 - a) Alternatively, since in LCS selection, technical offers *do not require be ranked (or to be added of weighted technical score to financial score – as in QCBS selection), it would suffice in appropriately simple cases if the evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark.*
 - b) *Thus, in LCS, a simplified evaluation criteria may also be used where instead of a marking scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc).*
 - c) *Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids.*
 - d) The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list.
 - e) Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders remain unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal.
 - f) This system of selection is roughly the same as the price-based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works. (Rule 193 of GFR 2017).
2. LCS is considered suitable for recruiting service providers from firms in most assignments that are of a standard or routine nature (such as engineering design of non-complex Consultancy/ services/ works) where well-established practices and standards exist.
3. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided if a selection method other than LCS is to be used.

4. Least Cost Selection - Risks and Mitigations

Risk-1

Technical criteria may not be relevant to realization of quality of assignment.

Mitigation-1

Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criterion and on the other hand no technically satisfactory offer should get ruled out by tight criteria.

Risk-2

Marking Subjectivity: The scheme of marking or its application may be subjective.

Mitigation-2

It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Port should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

8.3. Quality and Cost Based Selection (QCBS)

1. In QCBS system of selection, both the quality of the proposal and the cost of the services are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of service or work cannot be ignored.
5. Quality/ Technical scores are assigned to proposals based on specified quality criteria. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal is prescribed and proposals below this benchmark are not considered for Financial evaluation. The Financial Proposals are also given cost-score based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them.

For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the "cost" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. It may be noted that theoretically QCBS system with weight of 100%

(hundred percent) for the 'cost' approximates the price based LCS system. This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

Detailed procedure is given in Appendix-NCSM S2/A12

8.4. Direct Selection: Single Source Selection (SSS)

1. Under some special circumstances, it may become necessary to select a particular service provider where adequate justification is available for such single-source selection in the context of the overall interest of Port. (*Rule 194 of GFR 2017*). The selection by SSS/ nomination is permissible under exceptional circumstance such as:
 - a) tasks that represent a natural continuation of previous work carried out by the firm;
 - a) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
 - b) situations where execution of the assignment may involve use of proprietary techniques or only one service provider has requisite expertise;
 - c) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
 - d) Under some special circumstances, it may become necessary to select a particular service provider where adequate justification is available for such single-source selection in the context of the overall interest of the Port. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.
2. Port shall ensure fairness and equity, and shall have a procedure in place to ensure that:
 - a) the prices are reasonable and consistent with market rates for tasks of a similar nature; and
 - b) the required consultancy/ services are not split into smaller sized procurement.
3. All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-
 - a) The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.

- b) The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

4. SSS - Risks and Mitigations

Risk-1

Inappropriate Selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Port to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.

Mitigation-1

Full justification for single source selection should be recorded in the file and approval of the competent authority (schedule of Procurement Powers – SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Port should ensure fairness and equity and the required consultancy/ Non-consultancy services are not split into smaller sized procurement to avoid competitive processes.

Risk-2

Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.

Mitigation-2

Port must have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary, negotiations may be held with the consultants/ service providers to examine reasonableness of quoted price.

Chapter-9

Modes of Procurement

9.1. Modes of Procurement

1. Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and tendering systems are used to suit various procurement circumstances to achieve this balance. 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. A suggested format for SoPP is given at Annexure-3.
2. However, as mentioned in Para 1.3 (Applicability of this Manual), for procurements financed by Loans/Grants extended by International Agencies, like the World Bank, Asian Development Bank etc., the procurement procedures, as finalized and incorporated in the Articles of Agreements with such agencies for relevant Loans/ grants after consideration and approval of the Ministry of Finance are to be followed.
3. The various modes of procurement that can be used in public procurement are:
 - a) **Open Tenders**
 - i) Open Tender Enquiry (OTE); and
 - ii) Global Tender Enquiry (GTE)
 - iii) Rate Contracts
 - b) **Procurement through Selected Suppliers**
 - i) Limited Tender Enquiry - LTE (up to Rs. 50 (Rupees Fifty) lakh); and
 - ii) Special Limited Tender Enquiry (SLTE above Rs. 50 (Rupees Fifty) lakhs under exceptional circumstances)
 - c) **Nomination Basis Tenders**
 - i) Single Tender Enquiry (STE)
 - d) **Procurements with/without Calling Tenders**
 - i) Award of work through quotations
 - ii) Direct Procurement without Quotation;
 - iii) Direct Procurement by Purchase Committee

9.2. Open Tender Enquiry (OTE)

1. Higher Value of Procurements: In procurements of Non-consultancy services above Rs 50 (Rupees Fifty) Lakhs, it should normally be an OTE. Services which are available on GeM have to be mandatorily procured through that portal.
2. In Open Tender Enquiry (OTE), an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money, but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.*
3. OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:
 - a) Procurements exceeding the threshold of Rs. 50 lakhs (Rupees Fifty Lakh);
 - b) All requirements with clear technical and financial capabilities;
 - c) For requirements that are ordinarily available in the open market, it is necessary to evaluate competitive offers to decide the most suitable and economical option available and
 - d) When requirements are not available from known sources or sources are presently limited and need to be made broad-based. In such situations, even for procurements below Rs. 50 (Rupees Fifty) lakhs, the OTE mode may be used if warranted (Rule 161 of GFR 2017).

9.2.1 Terms and Conditions

1. There should be no restriction on participation by prospective bidders who meet the eligibility criteria. Especially prior registration with the Port should not be insisted upon. However, bidders who are already registered are also free to participate.
2. Advertisements in such cases should be given on the Government e-Marketplace (GeM) as well as Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and also publish all advertised tender enquiries on the Port website.
3. The Port should also post the complete tender document on its website and GeM- CPPP to enable prospective bidders to make use of the document by downloading it from the website.
4. The advertisements for the tender invitations should give the complete web address from which the tender documents can be downloaded. While it is no longer mandatory to issue advertisements in newspapers, there is no bar to issuing such advertisements if the procuring entities consider them necessary.

5. To promote wider participation and ease of bidding, no cost of tender documents may be charged for the tender documents downloaded by the bidders.;
6. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/made available for download up to the last date of tender submission.
7. The tender documents should be prepared based on the relevant approved Model Tender Document for the procurement category.
8. In offline tenders, the Port shall maintain proper records about the number of tender documents sold, the list of parties to whom sold, details of the amount received through sale, and the number of unsold tender documents, which are to be cancelled after the opening of the tenders.
9. In domestic tenders, bids can be submitted only in INR, and any bid in foreign currency should be summarily rejected. Foreign bidders can also participate if they submit a bid in INR. However, purchase preference for local content as per the PPP-MII shall apply.
10. In the case of domestic open tender for projects (including turnkey projects), allowing consortium bidding, a foreign bidder can be a consortium member, subject to the condition that the consortium as a whole meets the minimum local content criteria, as per the Make in India Order, 2017. The leader of the consortium can be a foreign party, and the bids are to be solicited in Indian Rupee only, i.e., no payment can be made in foreign currency to the foreign consortium member.

9.2.2 OTE - Risks and Mitigations

Risk-1

The crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that, this may not be achieved, even after incurring the extra cost of open tendering. This could be due to

- a) Insufficient publicity;
- b) Hindrances in the availability of tender documents;
- c) insufficient time for bid preparation or
- d) Due to the onerous cost of tender documents or EMD

Mitigation-1

- i) 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. Due diligence should be

done to locate likely bidders. All registered Consultancy firms (in particular past successful Firms) should be given intimation about forthcoming tenders via email.

- ii) Further, a limited or open tender that results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval, etc.
- iii) It should also be ensured that there is no impediment to the issue/access of tender documents.
- iv) Ordinarily, the due date fixed for the opening of the tender shall be a minimum of 21 (twenty-one) days from the date of advertisement, which may vary, considering the nature of the material called for and delivery requirements. The due date may be subsequently extended with the approval of the Competent Authority only if it is felt necessary to have better competition.
- v) The tender documents if at all priced, shall be priced minimally, keeping in view the value of the tender as well the cost of preparation and publicity of the tender documents.
- vi) EMD should be sufficient to ensure that bidders honour their bids but, at the same time, should not be large enough to reduce competition.

Risk-2

Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions.

Mitigation-2

Mitigations of such risks can be addressed at the time of need assessment and procurement planning to attract adequate competition.

9.3. Global Tender Enquiry (GTE)

- a) Global Tender Enquiry is similar to Open Tender Enquiry but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit (in case the requirement includes supply of equipments). It is aimed at inviting the participation of inter-alia foreign firms.
- b) In case it is felt that likely consultants may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries.

- c) Adequate time should be allowed for getting responses from interested consultants. The Port shall make available copies of the EoI document to the interested consultants in hard copies as well as on its website.

9.3.1 Terms and Conditions

The terms and conditions as stipulated by Government of India from time to time shall be followed for issuing GTE.

9.3.2 No Global Tender Enquiry (GTE) up to Rs. 200 crores (Rule 161 of GFR, 2017) shall be invited 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.

9.3.3. Procedure to be followed for approvals of GTE

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

- a) Market assessment should be done by the Port. Only after no Indian supplier/service provided is found, a GTE should be issued.
- b) 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.
- c) 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.
- d) The proposal for approval shall be submitted by the Port through Ministry of Shipping, Ports & Waterways (Administrative Ministry). The proposals submitted by individual Ports will not be entertained.
- e) The proposals shall be submitted along with duly filled format.

9.3.4 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.
- 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.

9.3.5. Certificates to be issued

- a) Confirmation of non-availability in India of particular equipment/ consumables/service providers of foreign origin through GeM and other sources.
- b) Certification of the requirement of proprietary items of foreign origin for the use of the specific project (where applicable).

9.4. Rate Contract (RC)/ Framework Agreement (FA)

1. A Rate Contract (commonly known as RC) is an agreement between the Port and the Supplier /Consultancy firm/Service Provider for the supply of specified services (and allied goods, if any) at a set price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract.
 - a) RC is most frequently used in the procurement of goods but can also be used mutatis mutandis in works, services, and consultancy – where it is commonly known as a Framework Agreement (FA).
 - b) No man-days is mentioned, nor is any minimum drawable man-days guaranteed in the Rate Contract.
 - c) The Rate Contract is a standing offer from the supplier/consultancy/Service providing firm.
 - d) The firm and/or the Port are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other, giving suitable notice (say thirty days).
 - e) However, once a supply order (also called withdrawal order) is placed in terms of the rate contract, during the validity period of the rate contract on the Supplier for the supply of a definite quantity/service, that supply order becomes a valid and binding contract.
2. The following types of services can be advantageously procured through rate Contracts:
 - a) Service that are regularly or repetitively required by more than one department in the Port.
 - b) The required services cannot be accurately forecast.
 - c) Individual department requirements of Port may be small, but the total aggregate requirements of all the departments may be considerable amount per annum.
 - d) The service has detailed scope and description.

- e) Prices of the services are stable, or if prices are variable, they can be determined through a price variation clause.

3. Merits of Rate Contract: The Rate Contract system provides numerous benefits to both the Port and the Service provider as indicated below:

a) The benefit to Users:

- i) Competitive and economical price due to aggregation of demands.
- ii) Saves time, effort, person-hours, and related costs involved in the time-consuming and repetitive tender process. It thus reduces lead time for procurement of services.
- iii) Availability of quality services with full quality assurance backup.
- iv) Enables procurement as and when required and thus reduces costs of continuous engaging.
- v) Provides one single point of contract to procure such services.

b) Benefit to Service providers:

- i) Reduces marketing costs and efforts.
- ii) Eliminates repetitive tendering and follow-up actions with multiple authorities.
- iii) Provides single-point contact within the departments of the Port.
- iv) Aggregation of Port's demand leads to economic deployment of key persons/technical experts.
- v) Improves the credentials of the company.
- vi) Promotes quality discipline.

9.4.1 Terms and Conditions

1. Conclusion of Rate Contracts, including Parallel Rate Contracts

- a) The Port can enter in to a rate contract for repetitive services. A nodal department can enter in to a rate contract on behalf of all departments. An estimate of the annual requirements of different ultimate users is needed. The agency entering the Rate Contract should post the salient details of the entire rate contracted for goods or services.
- b) Rate contract enquiries should preferably be through eProcurement or Open Tender Enquiry, but Limited Tender Enquiry/ Single Tender Enquiry can also be used if justified by the nature of the requirement. Specific

special terms and conditions for the Rate Contract should be added to the Tender Documents.

- c) Performance against earlier/current rate contracts of past/ current rate Contract holders shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date are to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their bids) to enable the Port to judge their performance and achievement against the past/current rate contracts.
- d) Procedures stipulated for evaluation of bids and award of contract shall be applicable mutatis mutandis in the finalisation of rate contract, including provisions for negotiations/ counter-offer and splitting of contracts (parallel contracts).
- e) Depending on the anticipated demand of the services, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc., parallel rate contracts may be awarded to more than one if possible. For transparency and to avoid criticism, all such parallel rate contracts are to be issued simultaneously, as far as feasible.

2. Period of Rate Contract: A Rate Contract should typically be for one year for stable expert services. However, in exceptional cases, a shorter or longer period of not more than two years may be considered. As far as possible, the validity period of rate contracts should be fixed in such a way as to ensure that new budgetary levies would not affect the price and thereby frustrate the contracts. Attempts should also be made to stagger the period of rate contracts for different services throughout the year.

3. Special Conditions Applicable for Rate Contract: Some conditions of rate contracts differ from the usual conditions suitable for adhoc contracts. Some such critical special conditions of the rate contract are given below:

- a) The Port may prescribe the amount of Bid Security in the Tender Document.
- b) No quantity/man days is mentioned in the Schedule of Requirement; only the anticipated drawable quantity/man days is mentioned without commitment.
- c) The Port reserves the right to conclude one or more than one rate contract for the same item/service.
- d) The Port and the Supplier may short-close the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen to thirty days.

- e) The Port can renegotiate the price with the rate contract holders, even during the validity, if market conditions change significantly or undertake repeat competitive bidding through open/ advertised tenders on the same terms and conditions, including specifications/mandays during the validity period of existing valid R/Cs. In such cases, the existing R/C holders can bid, apart from the new eligible bidders, and equal and fair opportunity would be provided. If the prices received are found lower than the existing R.C. prices, new R/Cs may be awarded at reduced prices and existing R/Cs at higher prices may be short-closed, giving adequate notice if they do not match such reduction in prices under the fall clause.
- f) In an emergency, the Port may procure the services through an adhoc contract with a new supplier.
- g) The Port and the authorised users of the rate contract are entitled to place supply orders up to the last day of the validity of the rate contract, and though supplies against such supply orders will be delivered beyond the validity period of the rate contract, the terms & conditions of the rate contract will guide all such supplies.
- h) **Fall Clause:** The fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or Organisation during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be allowed to reduce their price by notifying the reduced price to them, giving 07 (seven) days to intimate their revised prices, if they so desire, in a sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing a price reduction (after getting the rate contract) under the guise of the Fall Clause. As mentioned in the preceding paragraph, this situation must be handled similarly. It is, however, very much necessary that the Port keeps a particular watch on the performance of such rate contract holders who reduce their prices on one pretext or another. If their performances are not up to the mark, appropriately severe action should be taken against them, including deregistering them, suspending business deals with them, debarring them for upto two years from participating in the tender enquiry floated by the Port etc. The provisions of the fall clause will, however, not apply to the following:

- i) Sale of goods or services as original equipment prices lower than the price charged for routine replacement;
 - ii) Sale of goods or services at lower prices –
 - 1) on or after the date of completion of placement of order of goods by the Port, under the existing or previous Rate Contracts
 - 2) under any previous contracts entered with the Central or State Government Departments, including new undertakings (excluding joint sector companies and/or private parties) and bodies.
- 4. **Performance Security:** Depending on the anticipated overall drawable annual quantity /service against a rate contract and the anticipated number of parallel rate contracts to be issued for an item, the Port may consider obtaining Performance Security (@ 3% to 5%) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.
- 5. **Placement of Supply/work Orders:**
 - a) Port or its nominated officers in the Rate Contract can place supply/ withdrawal orders in terms of the rate contract during the validity period of the rate contract on the Supplier/consultant for the supply of definite quantities/mandays. An indent with required administrative and financial approvals is required before a supply order can be placed. Alternatively, the Port can centrally administer the placement of withdrawal orders against indents from the departments.
 - b) Once a Rate Contract is available, all nominated departments must mandatorily procure the item/services only through supply orders on the rate contract holders. In case of an emergency, if directly procures rate contracted goods or services from the suppliers, the prices to be paid for such goods or services shall not exceed those stipulated in the rate contract, and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. However, they may be permitted to procure a small value of their requirements directly (say up to Rs. One Lakhs at one time and not more than Rs 5 lakhs annually) following relevant procedures.
 - c) The Port may stipulate an upper threshold of value for supply orders received against the rate contract by the RC holder. Except with prior approval of the nodal department of the Port, the Contractor shall not

comply with the supply orders received from various departments exceeding such threshold amount.

- d) All parallel RCs for an item, even at differential rates, are assumed to be at reasonable rates. The Port can select any RC holder, following transparent and equitable criteria. For selecting the one rate contract holder in case of parallel Rate Contracts for ordering, the following factors may be kept in view:
 - i) The rate contract price.
 - ii) The past performance of firms with reference to their capacity, quality of supplies as well as timely delivery of the goods/services. The Nodal officer of the Port should maintain suitable records for past performance with respect to timely delivery and quality.
 - iii) The proximity of the rate contract holder where proximity is considered crucial for timely delivery, ease of progressing and from the point of view of logistics and contract management, etc.
 - iv) The delivery dates committed by various Rate Contract holders with respect to the delivery requirements of the Port.
- e) In rate contracts, if the time for delivery is not fixed by mutual agreement, it is not the essence of the contract and is not binding on the supplier. Therefore, no liquidated damages can be levied for non-supply or delay in supply against such orders. That being so, under section 46 of the Contract Act, the goods / services are only to be delivered within a reasonable time-which is a rather vague concept. But where there has been an unreasonable delay in delivery, the Nodal officer has the right to give the Contractor notice, fixing a reasonable time for delivery of the goods/services and stipulating that delivery within the time specified shall be the essence of the contract. If the goods/services are not delivered within this period, the supply order can be cancelled and deficient performance is noted for future Rate contracts.
- f) However, in cases where the delivery date stipulated in the relevant order has been expressly agreed to by the supplier in writing before placing the relevant order, liquidated damages can be recovered from the supplier on account of delay in delivery beyond the stipulated delivery date. Therefore, it is advisable that, before placing the supply order on a rate Contract holder, a commitment is obtained from him for the delivery period.

6. **Renewal of Rate Contracts:** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any

gap for all rate contracted items. In case it is not possible to conclude new rate contracts for some special reasons, timely steps are to be taken to extend the existing rate contracts with the same terms, conditions, etc., for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms who do not agree to such extension are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

9.5. Limited Tender Enquiry (LTE)

Procurements below Rs 50 (Rupees fifty) Lakhs: For procurement below this threshold, LTE can be issued to a selected shortlist of likely service providers. To start with preparation of a long list of potential service providers may be done on the basis of formal or informal enquiries from other Ports/ Ministries or Departments or Organisations involved in similar activities, Association of consultancy firms etc. The Port should scrutinise the preliminary long list of likely service providers as identified above and shortlist the prima facie eligible and capable service providers from the long list. The number of service providers in this moderated long-list should be more than three. To smoothen this shortlisting of service providers for projects below Rs 50 (Rupees Fifty lakhs) Lakhs, Port doing frequent procurement of non-consultancy services, may consider preparation of a Panel of qualified service providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. (*Rule 201 of GFR 2017*). Services which are available on GeM have to be mandatorily procured through that portal.

9.5.1 Terms and Conditions

1. The shortlist of Consultants from the list of registered consultants for the subject matter of procurement to whom it is proposed to send tender documents shall be approved by the competent authority before floating the tender.
2. In case the number of registered bidders for an item/work is large and unwieldy, a transparent system of rotation of invitation to bid may be used to keep the invited shortlist to a manageable number (say 8 to 12).
3. In the off-line tendering, copies of the tender documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to the panel of consultants on the list of registered consultants for the subject matter of procurement. Further, the Port should also mandatorily publish its limited tender enquiries on GeM , Central Public Procurement Portal (CPPP) and their own website.
4. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved Consultants are available, LTE may be sent to the available approved Consultants with the approval of the Competent Authority, duly recording the reasons. Efforts should then be made to identify a higher 105

number of approved Consultants to obtain more responsive bids on a competitive basis.

5. A simplified Tender Document with brief terms and conditions should be used instead of a detailed Tender Document. In any case, all registered consultants, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the registration application, which is applicable to such procurements, in addition to these brief “terms and conditions” in LTE tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.
6. In domestic tenders, any bid in foreign currency should be summarily rejected.
7. Since selected bidders are normally registered with the Port, Bid Security and Performance Security are normally not taken in LTE.

9.6. Special Limited Tender Enquiry (SLTE)

SLTE mode is permissible in certain special circumstances for values higher than Rs. 50 lakh (Rupees Fifty Lakh) (*Rule 162 of GFR 2017*), where normally OTE should have been done. Powers to sanction procurement on an SLTE basis in such exceptional cases may be laid down in SoPP based on a certificate of urgency signed by the indenter. The competent authority should also put on record the nature of the urgency and reasons why the procurement is being done from specific agencies.

9.6.1 Terms and Conditions

1. The tender process would be the same as in the case of a normal LTE described above. However, the tender documents are more detailed, as in the case of OTE.
2. The indenter should certify that there is an existing or prospective urgency for operational or technical requirements and that any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. The indenter should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.
3. In domestic tenders, any bid in foreign currency should be summarily rejected.
4. Unlike LTE, Bid Security and Performance Security are taken in SLTE as in OTE tenders.

9.7. Single Tender Enquiry (STE)

A tender invitation to one firm only is called a single tender. This mode may be the shortest, but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only subject to the reason for

such decision being recorded and approval of the competent authority obtained. This may be followed when the Port is of the opinion that the Consultant has specific knowledge and experience in the field. (Rule 166 (ii) of GFR 2017)

9.8. 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.

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.

9.9. Direct Procurement without Quotation or by Purchase Committee

Small Value and emergency Procurements: In many small value procurement of Non-consultancy services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective process for the Port. For procurement upto Rs 25,000 (twenty-five thousand), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly for procurement of services upto Rs 2.5 (Rupees two and a half) Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed.

Chapter-10

Tendering Systems

10.1. Tendering Systems

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

- a) Single Stage Tendering System
 - i) Single Stage Single Envelop System
 - ii) Single Stage Two Envelops System (Two Bid System) (Rule 163 of GFR 2017)
 - iii) Single Stage Multiple Envelops System with pre-qualification.
- b) Two Stage Bidding - Expression of Interest Tenders – Market Exploration/ Short-listing (Rule 164 of GFR 2017)

10.2. Single-Stage Tendering System

In single-stage tendering, bids are invited at a single stage of submission. The bids can be stipulated to be either in a single envelope or in multiple envelopes.

10.2.1. Single Stage Single Envelope System

1. In a single-stage single-envelope system, eligibility, technical/commercial details, and financial details are submitted together in the same envelope. Evaluation is in the sequence of evaluated responsive prices (from L1 onwards), and their technical/ commercial compliance is checked. The lowest priced bid that meets the eligibility/ qualification criteria, technical and commercial conditions laid down in the tender documents is declared as successful.
2. This tendering system is suitable where the technical requirement is simple or moderately complex, the capability of the source of supply is not too crucial, and the value of procurement is not too high. This is the simplest and the quickest tendering system and should be the default system of tendering.

10.2.2. Single Stage Two Envelopes System (Two Bid System)

1. In technically complex requirements, but where the capability of the source of supply is still not critical, and the value of procurement is not high, a Single-stage two-envelopes system may be followed.
2. In off-line tenders, bidders should be asked to bifurcate their quotations into two separately sealed envelopes. 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, except the price and relevant financial details. In the second envelope, called the financial bid, the price quotation, along with other financial details, are submitted. Both the envelopes are to be submitted together in a sealed outer envelope. In eProcurement, the bidder would be asked to upload two files, mutatis mutandis.
3. The techno-commercial bids are to be opened in the first instance on the pre-announced bid opening date and time. The bids are scrutinised and evaluated by the TEC with reference to parameters prescribed in the tender documents, and responsive, eligible, and technically compliant bidders are decided.
4. 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 the contract. In e-procurement, financial bids of technically non-compliant offers would remain encrypted and unopened. In off-line tenders, 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.

10.3. Single Stage Multiple Envelope System (1S3E)

1. 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.
2. This system is followed in works which do not lend themselves for technical specification / criteria or type of key personnel required 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 or expertise of key personnel and the man days required etc, 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.

- a) 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 and the expertise required. 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.
- b) The first envelope will have the documents relating to the fulfilment of eligibility criteria in the areas of experience, proposed key personnel, completion of past work as specified in the tender document, financial status along with the details of plant and machinery, etc.
- c) 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 /expertise are declared. In the technical bid, the tenderers can give alternative designs/experts required 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.
- d) 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.

10.4. Two-Stage Bidding - Eol Tenders

10.4.1. Expression of Interest Tenders – Market Exploration

In the case of green-field/ blue-sky projects, where the equipment/ plant/infrastructure to be procured/planned is complex, the Port may not possess the full knowledge of either the various technical solutions available or the likely sources for such products/services in the market. To meet the desired objectives of a transparent procurement that ensures value for money and simultaneously ensures the upgradation of technology & capacity building- it would be prudent to invite an Expression of Interest (Eol) Bids as a first stage of the two-stage tendering system to explore the market and expertise of the consultancy firms and finalise specifications based on technical discussions/presentations with the experienced Consultants in a transparent manner. In less complex cases, a market consultation through a pre-NIT conference may suffice instead of two-stage tendering.

Chapter-11

Channels of Procurement

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

11.1. Electronic Procurement

Electronic procurement (e-procurement) (Rule 160 of GFR 2017) is the use of information and communication technology (specially the internet) by the buyer (through a third-party e-Procurement portal) in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures.

1. It is mandatory for all Ports to publish their tender enquiries, corrigenda thereof and details of bid awards online on the Central Public Procurement Portal (CPPP) and also on their website. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.
2. Normally in e-Procurement no manual Tender Documents are provided, nor any manual bids are accepted. It is not a good practice to call both electronic as well as manual bids in the same tender.
3. In Global Tender Enquiry (by any mode – Open Tender, Limited Tender or Single Tender) e-procurement may not be mandatorily insisted upon, however e-Publishing would still be mandatory.
4. Services costing less than Rs 2.5 lakh may be awarded (provided such services are not available on GeM) through Direct Procurement (with/without quotation).
5. National Informatics Centre (NIC) has an e-Procurement portal called Government e-Procurement of NIC (GePNIC). There are other service providers in Public Sector (e.g., MSTC) and Private sector which can be utilized for e-Procurement. Details about the process of e-procurement are available from the service providers.
6. These instructions will not apply to procurements made by Port through Government e-Marketplace (GeM). (Rule 160 of GFR 2017)

11.2. Mandatory Procurement of Services through (GeM)

Government Electronic Marketplace is a type of e-commerce site where product or services are offered by several sellers and all the buyers can select the products / services offered by any one of the sellers, based on his own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers. Other capabilities included are auctioning (forward or reverse), catalogues, ordering, posting of requirements by Purchasers, Payment gateways etc. The procurement process on GeM is ended to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. The Procurement of Services by Port is mandatory for Services available on GeM as per Rule 149 of GFR, 2017.

11.3. Procurement through Centralized Agencies or other Organizations

Ports, who have not built-up their own infrastructure for purchase, may engage procurement agents (for individual procurement or as outsourcing of service) with the approval of Competent Authority. Many canalized agencies authorised by the Government and some CPSEs (Examples (not an exhaustive or recommendatory list) of such agencies are – Rail India Technical and Economic Services (RITES), Engineers India Limited (EIL), Indian Railway Institute of Logistics and Materials management (IRILMM), Institute of Public Auditors of India (IPAI) etc.) do provide such end-to-end procurement services, i.e., framing procurement documents, bidding process, evaluation, and contract management. Procurements by such agencies would have to conform to these Procurement Guidelines. In such cases a Contract can be placed on them for procurement services, at mutually agreed terms.

Chapter-12

Bid Invitation Process

12.1. Preparation and Uploading/ Floating of Tender Documents

12.1.1. Model Tender Documents

Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Non-Consultancy Services. Port may customise relevant MTD for preparing tender documents for their procurements. Guidance notes annexed to the MTDs, details the process of customisation of MTD for an Organisation and for each procurement. Port may issue instructions regarding appropriate delegation of authority for approval of the Tender Documents before these are floated/ uploaded.

12.1.2. Tender Documents

1. The tender document is the fundamental document in the public procurement process and becomes part of the contract agreement after award of Contract. A carefully prepared tender document avoids delays and complaints. This will also attract more bidders to formulate and submit their competitive bids with confidence. Hence, it is worth spending time and effort on this even in cases of urgency.
2. Provisions/ clauses in the tender document should be clear, self-contained, and comprehensive without any ambiguity. to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises.
3. While tender document should be complete in itself, it may be slightly different for various categories of procurements. The tender document must necessarily address the essential aspects mentioned below. Model Tender Documents, issued by the DoE, which comply with all these following requirements may be used with due customisation, as per the guidance notes annexed to the MTDs.
 - a) Description of the subject matter of procurement, its specifications/ drawings including the quality/ nature/ quality assurance, quantity, time and place or places of delivery/ completion;
 - b) Limitation or preference for participation by bidders in terms of the Government policies;
 - c) The procedure as well as date, time, and place for obtaining, submitting, and opening of the bids;
 - d) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which Port will address the bidder's questions;

- e) Criteria for determining the responsiveness of bids, criteria as well as factors to be considered for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous bidder should be clearly indicated in the tender documents;
 - f) The qualification Criteria for the bidders should take care of its capability to perform the resultant contract successfully, balancing considerations of quality, time, and cost.
 - g) Commercial terms and conditions e.g., payment terms, tax implications, respective obligations of the Port and the suppliers, compliance framework for statutory and other norms. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
 - h) Tender document should include a clause that "if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered."
 - i) Procedures for redressal of grievances or complaints from aggrieved bidders;
 - j) If applicable, Integrity Pact clause and format to be signed, shall be included;
 - k) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the tender document; and
 - l) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.
4. Eligibility criteria specifies the very basic criteria that abider should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids.
5. **Qualification Criteria:** Technical and Financial qualification Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the qualification criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
6. **Evaluation Criteria:** Port may include in the evaluation criteria in the Tender Document based on one or more of quality, price, technical merit, running costs, cost- effectiveness, and technical assistance, period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or has not been specified in the Tender Document.

7. Open, online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature can participate.
8. The Port should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks and not more than three months. In cases where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed.
9. In case of a limited tender, instead of a full set of Tender Document, only a machine numbered tender form is used as the tender document, after filling up the name of the vendor and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all registered consultants, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the registration application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.
10. Tender documents should invariably reserve Port’s right without assigning any reason to:
 - a) reject any or all of the Bids, or
 - b) cancel the tender process; or
 - c) abandon the procurement of the Services; or
 - d) issue another tender for identical or similar Services.

12.1.3. Contents of Tender Documents

1. The Tender Document has following main sections (*Rule 168 of GFR 2017*). A reading of the sections of the tender document will make the purpose and instructions clear:
 - a) Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS)
 - b) Section II: Instructions to Bidders (ITB)
 - c) Section III: Appendix to Instructions to Bidders (AITB)
 - d) Section IV: General Conditions of Contract (GCC)
 - e) Section V: Special Conditions of Contract (SCC)
 - f) Section VI: Schedule of Requirements
 - i) Section VI-1: Services and Activities Schedule

- g) Section VII: Performance Standards and Quality Assurance
 - i) Section VII-1: Method Statement
 - ii) Section VII-2: Work Plan
 - iii) Section VII-3: Critical Material Schedule
- h) Section VIII: Qualification Criteria
 - i) Section VIII-1: Personnel Schedule
 - ii) Section VIII-2: Critical Equipment Schedule
- i) Financial Bid (BOQ Excel Sheet)
- j) Submission forms and formats, including Bid Form (Cover letter), bank guarantees and contract format etc.

12.1.4. Notice Inviting Tender

1. NIT has legal important, since it is this part of tender document, which is soliciting offers from the bidders. The model NIT format in MTD should be used for publishing the tender notice.
2. The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The NIT (and its appendix TIS) must contain sufficient information in brief for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. To ensure competition, attention of all likely bidders, for example, registered vendors, past suppliers, and other known potential suppliers, should be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.
3. In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Port's website with a note saying:

"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 registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with Port as per procedure."
4. Printouts of the tenders published on the website should be collected and kept on record as a proof of publicity. The complete details of the dates, on which advertisements appeared on the website, should be indicated while sending cases to higher authorities.

12.1.5. Instructions to Bidders (ITB)

Instructions to Bidders (ITB) and its Appendix (AITB)

ITB contain all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents; preparing and submitting a responsive, process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders and award of contract but should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. ITB also contains introduction/ overview of the contents of the tender document. Instead of modifying ITB every time, any changes warranted by exceptional circumstances may be indicated with the prior approval of CA on a separate Appendix to ITB (AITB) and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB shall supersede the corresponding provisions in the ITB.

12.1.6. General and Special Conditions of the Contract

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

12.1.7. Schedule of Requirements and Services and Activities Schedule

Schedule of Requirements and its sub-schedule - Service and Activities Schedule describe the background, purpose/ objectives, description/ scope, deliverables/ outcomes, quantum, timelines of Services required etc. The requirements may consist of more than one schedule. Each schedule may contain more than one Service. In case of multiple schedules of requirement in a tender of Services, it should be clarified, how bids for multiple schedules would be evaluated for award of contract – either schedule by schedule or in total. Bidders must fill up Compliance regarding these Schedules.

12.1.8. Performance Standards and Quality Assurance

Method Statement; Work Plan; Critical Material Schedule

1. Performance Standards and Quality Assurance stipulates the quantitative/ qualitative parameters/ limits/ thresholds for Performance standards/ Service Levels and functional/ technical specifications to which the service must be

performed. It shall stipulate procedures for measurement, reporting and monitoring of performance parameters, including institutional or third-party arrangements for this purpose. It shall also stipulate the procedure for resolution and escalation in case of deficiency in performance/ quality/ service levels. In the case of long-term and complex services, it may stipulate a Service-Level Agreement (SLA) agreement which must be complied with during delivery of Services. Performance Standards shall also include statutory compliance required for Occupational Safety, Health and Working Conditions requirements during delivery of Services.

2. Port may, if considered necessary, specify sub-schedules: Method Statement, Work Plan and Critical Material Schedules required for the performance of services to desired quality and standards. Otherwise, these may be left to be quoted by the Bidder.
3. Bidders must fill up the relevant forms regarding this Schedule.

12.1.9. Qualification Criteria

Personnel Schedule; Critical Equipment Schedule

1. **Qualification criteria** is needed to determine whether a bidder has the required capacity/ capability and credentials to successfully perform the contract. These Sections lay down the Qualifying Criteria for a bid/ Bidder to be considered a responsive bid/ bidder for further evaluation. Bids/ bidders not meeting these Qualification criteria shall be rejected as nonresponsive. Unless otherwise stipulated, the Qualification Criteria shall include:
 - a) Criteria 1: Experience and Past Performance
 - i) Similar Experience
 - ii) Non-performing Contracts and Litigation
 - b) Criteria 2: Performance Capability
 - i) Key Personnel
 - c) Critical Equipment
 - d) Criteria 3: Financial Capability
 - i) Financial Ratios
 - ii) Turnover
 - iii) Financial Liquidity

The bidder must ensure that he fills up all forms and formats relevant for the compliance to the Qualification Criteria and provides convincing proof of having fulfilled these criteria.

2. **Relaxation for Start-ups:** The condition of prior turnover and prior experience may be relaxed for startups (only to startups recognized by Department of Industry & Internal Trade (DPIIT)) subject to meeting of quality & technical specifications and making suitable provisions in the tender document (Rule 173 (i) of GFR 2017). Startups may be MSMEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional, but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipments, etc) where adequate justification exists for the Port to not to relax such criteria.
3. Qualification Criteria shall be based entirely upon the capability and resources required to perform the particular contract satisfactorily, considering bidders' experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing and relevant, compliance with environmental protection regulations/ Environment Management System. There should be no qualification criteria that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods. The type of service, scope, delivery, and value of the procurement shall be kept in view, while fixing the Qualification criteria. However, a sample example is given below for illustration:

a) Financial Capability:

- i) Average Annual gross billing of related services during the last three years, ending 31st March of the previous financial year, should be at least 10 times the annual estimated cost,
- ii) Generally, financial capability required in Non-consultancy services as a multiple of annual Tender value should be much higher than the multiple in works. This is because the service provider has to sustain the services over a long period of time. That is why a multiple of 10 is mentioned above.
- iii) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Tender Document.

b) Past Experience:

- i) The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/ PSUs/ Nationalised Banks/ Reputed Organisations. Services rendered with list of such Central/State/ PSUs/ Nationalized Banks with duration of service shall be furnished.

- ii) The bidder must have successfully executed/completed similar Services (definition of "similar services" should be clearly defined), over the last three years i.e. the current financial year and the last three financial years: -

- 1) Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost; or
- 2) Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or
- 3) One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost.

c) Equipment and Managerial Capability:

- i) Ownership/ proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
- ii) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager;

12.1.10. Financial Bid (BOQ Excel Sheet)

1. Port should select an appropriate format of BOQ from the eProcurement Portal and upload it after filling up the entries for the complete schedule of requirements and various price components to enable the system to automatically calculate all-inclusive price of a bid to generate a comparative tabulation of all bids.
 - a) The Bidder should fill in rates and prices for all items of the Services described in the in the Services and Activities Schedule.
 - b) Items for which no rate or price is entered by the Bidder will not be paid for by the Port when executed and shall be deemed covered by the other rates and prices in the Services and Activities Schedule.
 - c) The priced Services and Activities Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses.
 - d) All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total Bid price submitted by the Bidder.
 - e) For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder.

- f) Bidding Documents should include a clause that "if a firm quotes NIL service charges/ consideration, the bid shall be treated as unresponsive and will not be considered".
- g) Bidders are to upload only the downloaded BOQ (in excel format) after entering the relevant fields without any alteration/ deletion/ modification of other portions of the excel sheet.
- h) The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the Goods to be supplied, location of the bidder, location of the consignee(s), terms of delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour of the bidder's country and in India.

2. Restrictions regarding Personnel Deployed:

- d) The quoted rates shall not be less than the minimum wage fixed/notified by the State Government – where the service is performed and shall include all statutory obligations and service charges/ margin (including transaction charges) over such minimum wage.
- e) Bids without any element of cost over and above such minimum wage shall be treated as 'Nil' price quotation and would be rejected.
- f) Least Cost System (LCS) should be considered for procurement of Manpower Outsourcing Service, wherever appropriate, especially in high value cases.
- g) The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Port shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Port. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

12.1.11. Submission Forms and Formats

This section contains the relevant forms for tender submission: various declarations by bidder, formats for the bank guarantee, financial bid forms (BOQ Excel Sheet), exception and deviation forms, contract forms and manufacture's authorisation form, Integrity Pact (if applicable) and so on.

12.1.12. Important provisions of ITB

As already mentioned, ITB contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing, and submitting a responsive bid, process of establishing the eligibility/ qualification

credentials of the bidders, Code of Integrity in Public Procurement (CIPP), process of grievance redressal, as well as evaluation and comparison of tenders and award of contract. It also contains introduction/ overview of its contents. It mentions the type of entities which may participate, specifically if JV/C are permitted to participate. It shall also mention that the consulting company should be registered under applicable act with registered offices in India. It also excludes insolvent, bankrupt, debarred, convicted, firms with conflict of interest from participation. Restriction of participation of bidders from certain countries having land borders with India are also applicable. Other important provisions in a ITB are:

1. **Eligibility and Preferential policies:** Provisions relating to Eligibility Criteria, Conflict of Interest and applicable preferential policies regulate the participation of bidders of various categories and their agents, if any.
2. **Period of Contract:**
 - a) A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Therefore, in the normal course, the period of initial contract may be fixed normally for two years.
 - b) Extension of Contract: The clause of extension of contract beyond the period of two years may be for a further period of one year subject to the service provider providing satisfactory service. Thereafter fresh bidding for new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5 percent of the total contract value, extension beyond the initial period of two years may not be considered.
3. **Bid Prices, Taxes and Duties:** Provisions regarding Price components, Price Schedule, GST, Currencies of Bid, Firm/ Variable prices, Payments are detailed in the ITB.
4. **Bid Security and Performance Security:** Provisions relating to Bid Security and Performance security are detailed in ITB.
5. **Proposed form of contract**
 - a) The contract includes Description of Services - accepted activities, methodology, deployment of resources (Personnel, Equipment and Material), Price Schedule, as well as general and specific conditions of contract, etc. Wherever possible, the Port shall use the Standard Form of Contract. The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub-contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest,

compliance to local laws and taxes and duties etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Port.

- b) **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures. (Rule 186 of GFR 2017)

12.1.13. Uploading of Tender Documents: Mandatory e-Publishing

It is mandatory for all Ports to publish their tender enquiries, corrigenda thereof and details of bid awards online on the Central Public Procurement Portal (CPPP) and also on their website. (Rule 159 of GFR 2017). These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.

12.1.14. Amendment of Tender Documents

- a) At any time prior to the date of submission of bids, the Port may, Suo-moto or in response to a clarification sought by a prospective bidder (directly or in pre-bid conference), amend tender documents (Rule 173 (iii) of GFR 2017) by issuing a corrigendum.
- b) Copies of such amendment / modification should be uploaded on the E-publishing portal and Port's own website.
- c) In case of off-line tenders, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale).
- d) When the amendment/modification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be suitably extended (not less than 3 days)

12.1.15. Extension of Deadline of Bid Submission

1. To give sufficient time to bidders to prepare and submit their bids, the Port may suo-moto or based on justifiable request of bidder(s) or due to significant modification of tender documents extend the time and date of submission of tenders suitably (not less than three (3) days), along with suitable changes in the corresponding time-frames for receipt of tender, bid validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such

an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

2. The e-Procurement portal/ GeM should not provide the bid count before the tender opening time to anybody including the Port, even on their request. The eProcurement portal/ GeM may permit Port to input minimum number of bids considered sufficient and prespecified number of days for automatic extension of bid opening (not less than 10 days) at the time of tender upload. The system shall declare in the tender details that in case of low competition (without specifying the number), the tender closing time shall be automatically extended by specified number of days. If bids received till the bid opening time are less than the specified minimum bids the system should automatically extend the tender opening by specified number of days without seeking any input from or sharing any information with anyone including the Port. Purchaser and bidders shall only be informed that due to less competition, the tender closing time has been extended up to (date and time). If a Port wants to go ahead even with low competition (e.g., due to urgency), they may mention 'one' as minimum bid. So that if no bid is received tender is automatically extended otherwise not. GeM and eProcurement portals shall update their systems accordingly.

12.2. Obtaining Tender Documents and Submitting Bids

12.2.1. Availability and Cost of Tender Documents

- a) Tender documents should preferably be sold or available for download after the date and time of the start of availability till the deadline for availability (Rule 161 (v) of GFR 2017) as mentioned in tender document (say up to the last date of submission of tenders) and this should be clearly indicated in the documents.
- b) The Port should also post the complete tender document on the website and permit prospective bidders to make use of the document downloaded from the website.
- c) Normally no tenders document fee should be charged. In exceptional cases Port may fix a bare minimum cost of tender documents to defray the expenses/ effort of preparing documents, drawings etc.
- d) The cost of the tender document is to be submitted to the authority nominated therein by the prospective bidder in the form of a demand draft /banker's cheque/ pay order/ online payment gateway.
- e) Firms that are eligible for exemption from the tender document cost such as MSEs, Port's registered units (for relevant items and monetary limit) have to submit/ upload scanned copy of documents in support of this exemption.

12.2.2. Participation of Bidders**1. Eligibility Criteria**

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

2. Purchase Preference Policies

The Port may reserve its right to grant preferences to eligible Bidders under various Government Policies/ directives (policies relating to Make in India; MSME; Start-ups etc.).

12.2.3. Pre-bid Conference and Pre-NIT Conference

- 1. **Pre- 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 publicised so that different potential suppliers can attend (Notified under para 9.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021).

- 2. **Pre-bid Conference:** (Rule 173 (x) of GFR 2017)

In all cases of large value or complex assignments, a suitable provision shall be kept in the tender documents for one or more pre-bid conference for clarifying issues/clearing doubts if any, and for ensuring a level playing field, relating to the specifications and other allied technical/commercial details. During this conference, the technical/ commercial details, scope of requirements, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids

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

- b) The date and time for such a meeting should normally be after 15 to 30 (fifteen to thirty) days of issue of the Tender Document and should be specified therein. The date and time by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the tender Document (7 days before the date of the conference, if not specified). The pre-bid conference may also be held online at the discretion of the Port.
- c) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per the specified format from their Company/ principals; else, they shall not be allowed to participate.
- d) After the Pre-bid conference, Minutes of the Pre-bid conference shall be published on the Port's portal within seven days from the conference. Where some significant changes are made in the terms/scope of the Tender Document as a result of the pre-bid meeting or otherwise considered necessary by the Port, a formal corrigendum may be issued, to all bidders, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Port may suitably extend, as necessary, the deadline for the bid submission.

12.2.4. Site Visit

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

12.2.5. Clarification of Tender Documents

- a) A prospective bidder requiring clarification on the tender documents may ask questions in writing/ electronically from Office/ Contact Person as mentioned in tender document, provided the questions are raised before the clarification end date mentioned therein (or if not mentioned, before 7 days of the deadline for the bid submission).
- b) This deadline shall not be extended in case of any intervening holidays.
- c) A response will be sent in writing to the clarifications sought prior to the date of opening of the tenders.
- d) Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.

12.3. Withdrawal/ Amendments / Modifications to Bids by Bidders

- a) The bidder, after submitting its bid is permitted to substitute/ alter/modify it, superseding earlier bid, so long such revised bid is uploaded/ received duly

sealed and marked like original bid, up to the deadline of submission of bids.

- b) Resubmission of a bid shall require uploading of all documents, including financial bid afresh.
- c) The system shall consider only the last bid submitted as the valid bid.
- d) The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not get opened during the Bid opening.
- e) Any such action after that deadline is not permitted.
- f) Withdrawal/ amendment/ modification/ alteration/ impairment/ derogation of a bid, in any respect, by its bidders between the deadline for submission of bids and expiration of the period of bid validity, his bid security/ EMD shall be forfeited besides imposition of any other punitive remedy available to the Port.

12.4. Sealing/ Marking of Bids in off-line Tenders

- a) The tender document should indicate the manner of submission/ uploading of bids. In case of off-line tenders, total number of bid copies (for example, in duplicate or in triplicate, and so on) required to be submitted.
- b) The bidder is to seal the original and each copy of the bid in separate envelopes, duly marking the same as "original", "duplicate," and so on, and printing the address of the purchase office and the tender reference number on the envelopes.
- c) Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes.
- d) The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above.
- e) If the outer envelope is not sealed and marked properly as above, the Port does not assume any responsibility for its misplacement, premature opening, late opening, and so on.

12.5. Uploading/ Submission of Bids

12.5.1. Uploading Bids in eProcurement

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

- a) Any query/ clarification/ complaint regarding downloading Tender Documents and uploading Bids on the e-Procurement portal may be addressed to the Help Desk of the portal.
- b) In case of conflict between provisions of the Portal with the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders.
- c) Bids must be uploaded till the deadline for submission mentioned in the Tender Document. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall not be extended. Bidder must comply with the conditions of the eProcurement portal, including registration, compatible Digital Signature Certificate (DSC) etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.
- d) Only one bid can be uploaded by the bidder. The system shall consider only the last bid submitted through the e-procurement portal.
- e) Bidder shall digitally sign all statements, documents, certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000 as amended from time to time.
- f) Regarding the protected Price Schedule (excel format, Cover-2), Bidder shall write his name in the space provided in the specified location only. Bidder shall type rates in the figure only in the rate column of respective item(s) without any blank cell or Zero values in the rate column, without any alteration/ deletion/ modification of other portions of the excel sheet. If space is inadequate, Bidder may upload additional documents under "Additional Documents" in the "bid Cover Content."
- g) The date and time of the e-Procurement server clock, which is also displayed on the dashboard of the bidders, shall be taken as the reference time for deciding the closing time of bid submission. Bidders are advised to ensure they submit their bid within the deadline and time of bid submission, taking the server clock as a reference, failing which the portal shall not accept the Bids. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their bid because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The Port shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-Tender Process.
- h) All Bids uploaded by Bidder to the portal shall get automatically encrypted. The encrypted bid can only be decrypted/ opened by the authorised

persons on or after the due date and time. The bidder should ensure the correctness of the bid before uploading and take a printout of the system generated submission summary to confirm successful bid upload.

- i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). Bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Port reserves its right to call for verification originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before the issue of Letter of Award (LoA). Unless otherwise specified, originals (or self-attested copies of originals – as specified therein) of specified scanned uploaded documents must be physically submitted sealed in double cover and acknowledgement be obtained before the bid submission deadline at mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for physical submission of originals, it shall stand extended to the next working day at the same time and venue.
- j) No manual Bids shall be made available or accepted for submission in e-Procurement (except for originals of scanned copies as per sub-para above).

12.5.2. Submission of Bids in offline Tender Process:

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

- a) The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope.
- b) The Port shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- c) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- d) For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the

tender(s). Names and designations of at least two such authorised officers should be mentioned in the tender documents.

12.5.3. Bid security:

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

12.5.4. Bid Validity

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

12.6. Opening of Bids

1. Immediately after the deadline for bid submission, Port shall proceed to the bid opening. If the specified date of Bid Opening falls on is subsequently declared a holiday or closed day for the Port, the Bids shall be opened at the appointed time on the next working day. In offline tenders, the BOC shall comprise one officer each from the Port and Associated/ integrated Finance.
2. In e-procurement, all tenders uploaded by bidders are received, safeguarded, and opened online on the portal.
3. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:
 - a) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the tender document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure-6;
 - b) At a prescheduled date and time, the Tender Opening Committee (TOC) of the day should get the tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with.
 - i) All bids should be collected from the tender box.

- ii) Bids for tenders not opening on that day should be put back into the box and the box resealed.
- iii) Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Evaluation Committee (TEC) concerned if the date of opening is over.
- iv) 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.
- v) TOC should ensure and demonstrate that bid envelopes are duly sealed and untampered.
- vi) Late bids should be separately counted but kept aside and not opened.
- vii) In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 165, 188 of GFR 2017);
- c) The technical bids will be opened on the pre-announced date and the financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically.
- d) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the TOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the TOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the TOC;
- e) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the TOC should write them in words. All rebates/discounts should be similarly circled, numbered, and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”

- f) The 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 distinctive feature of the tender for the information of the representatives attending the tender opening. No clarifications by bidders should be entertained or allowed to be recorded during the bid opening. TOC has no authority to reject any tender at the tender opening stage;
- g) Financial instruments should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
- h) A bid opening report containing the names of the bidders (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.
 - i) The name of the bidder proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The Port shall prepare the minutes of the public opening. Format at Annexure-6 may be used for this purpose. When electronic submission of proposals is used, this information shall be posted online.
 - ii) Similar procedure shall later be followed during Financial Bid Opening in case of multiple-envelop bidding.

12.7. Transparency and Protecting Third-Party Rights of Bidders

1. Objectives of transparency in eProcurement are amply served if all data relating to the Tender and Award of Contract are accessible to public.
2. As far as the bidders who have participated in a tender (participating bidders), for purpose of transparency, comparative summary of Technical (compliance details) and of Financials bids (including QCBS calculations, wherever applicable) should also be accessible to them, but not necessarily to public at large, unless sought and is permissible under the RTI act.
3. Bidders may have genuine concern about Techno-commercial and operational trade secrets, if their full technical and financial bids are accessible to their competitors or public at large. This concern may get aggravated in complicated EPC/ PPP/ Consultancy procurements. Technical/ financial bids should not be made accessible to public at large and a call needs to be taken based on sensitivity of details in the bids to restrict access of even participating bidders to full technical/ financial bids of their competitors. Decision of Port to share or not

share the full technical bids with other participating bidders, should be clearly brought out in the Tender Documents.

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

12.8. Bidding Invitation Process- Risks and Mitigations

Risk-1

Exceptions to an open tender process are abused, leading to single source processes.

Mitigation-1

Rigorously follow the conditions under which open tendering can be dispensed with.

Risk-2

When short lists are used, the process of preparation of short lists may be non-transparent and all eligible firms may not be included, and some ineligible firms may get included.

Mitigation-2

Registration of bidders/contractors: All major procuring Departments must keep a list of registered bidders for use in restricted tendering. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of Competent Authority.

Risk-3

Pre-qualification criteria: PQB has the potential of getting misused or being applied without considering the restrictive nature of competition. PQC should be relevant to the quality requirements, and neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive, and yet specific. Also, there should be fair competition.

Mitigation-3

Lay down criteria when two stage tendering is warranted. Also lay down model PQC criteria for diverse types of procurements.

Risk-4

Invitation to tender (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.

Mitigation-4

Publicity and adequate time for bid submission must be ensured. Require a higher-level approval for short bid submission period.

Risk-5

Evaluation criteria are not set from the beginning or are not objective or not clearly stated in the tender documents, thereby making them prone to being abused.

Mitigation-5

Objective, relevant and clearly stated evaluation criteria must be specified in the tender document.

Chapter-13

Forms of Securities

13.1. Forms of Security

13.1.1. Bid Security

1. To safeguard against a bidder's with drawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or special limited tender enquiry Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids (Rule 170 of GFR 2017).
2. The bidders should be asked to furnish bid security along with their bids (Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017). Amount of bid security should ordinarily range between one to two per cent of the estimated value of the services to be procured. The amount of bid security, rounded off to the nearest hundred Rupees, as determined by the Port, is to be indicated in the tender documents.
 - i) For Non-Consultancy services estimated to cost up to Rs ten crore or as notified from time to time: 2% (Two percent) of the estimated cost
 - ii) For Non-Consultancy Services 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) Petty services costing Rs. 25,000 or less the concerned Engineer at his discretion, dispense with the conditions for calling for earnest money.
 - iv) For special Consultancy service 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.
3. The bid security may be obtained in the form of insurance surety bonds, account payee demand draft, or banker's cheque or Bank Guarantee (including e-Bank Guarantee) from any of the Commercial Banks or payment online in an acceptable form. In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount) issued/ confirmed from any of the scheduled commercial bank in India in an acceptable form. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.
4. In place of a Bid security, Port may after seeking approval of the competent authority consider asking Bidders to sign a Bid securing declaration (BSD), accepting that if they withdraw or modify their Bids during the period of validity,

or if they are awarded the contract and they fail to submit a performance security, or to sign the contract, before the deadline defined in the tender documents, they shall be suspended for the period of time specified in the BSD from being eligible to submit Bids/Proposals for contracts with the Port.

5. In appropriate cases, submission of the bid security may be exempted with the Competent Authority's approval, bidders that are currently registered, and will also continue to remain registered during the bid validity period with the Port. Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) and registered Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT) are exempt from payment of EMD.
6. A bidder's bid security shall be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security, or to sign the contract within the specified period.
7. Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage tendering, Bid securities of unsuccessful bidders during first stage i.e., technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e., technical evaluation etc. (Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022).

13.2. Performance Security

1. To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract (Rule 171 of GFR 2017). Performance security should be for an amount of three (3) to five (5) per cent of the value of the contract, as specified in the tender documents.
 - a) Port may stipulate an upper ceiling for the Performance Security. For an illustrative example, the ceiling can be Rs 75 Lakhs for tenders up to Rs 50 Crores and Rs 3 Crore for tenders above Rs 50 Cr but below Rs 300 Cr. For tenders of higher value than this, the Port may decide the amount of Performance Security (but not less than Rs 3 Cr mentioned above).
 - b) Port may decide their own upper limits for performance security, with the Finance Concurrence and the approval of Competent authority based on their perception of performance risks vis-a vis need for competition
 - c) Performance security may be furnished in the form of Insurance Surety Bond (Notified vide OM No. F.1/1/2022-PPD issued by Department of

Expenditure dated 02.02.2022), account payee demand draft, from a commercial bank, bank guarantee (including e-bank guarantee (Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022) issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects.

- d) In the case of GTE tenders, the performance security should be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities
 - e) Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable.
2. The right quantum of performance security has to strike a balance between protecting the Port's interest in case of default in performance vs. avoiding increase in tendered price and /or reduced competition. If the security is low, the Port may be adversely affected if and when default occurs. If it is high, the extra financial cost of furnishing such security will be factored in by bidders when quoting prices & hence the cost may increase.
 3. Sufficient flexibility is already available in the GFRs to design the performance security for procurement of services, both value and duration, duly considering the market conditions and commercial practice for the particular kind of service.
 4. Submission of Performance Security is not necessary for a contract value upto Rupees 1 (one) lakh.
 5. Port may exempt CPSEs or Government Organisations (on their specific requests or otherwise) from submission of Performance Security:
 6. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award, depending on the amount) and it should remain valid for a period of 60 (sixty, or any other period mentioned in the tender Documents) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
 7. The performance security will be forfeited and credited to the Port's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Port, to make the process transparent and visible.

8. In the case of service contracts spanning over multiple number of the years, care needs to be taken to decide on the amount of performance security being sought along with the duration. It has been observed that procuring entities retain the performance security over the complete service contract period which may be of 5-7 years or may be more. This practice puts the service provider in a difficult situation as they have to block a substantial amount of their working capital as security for the entire duration of the contract. In such cases procuring entities may consider to proportionately keep reducing performance security in proportion to the balance service period, wherever feasible. Wherever, it is decided to take lower or proportionally reducing Performance Security, tender conditions may be suitably modified for the future cases.
9. As per Rule 172 (1) of General Financial Rules (GFRs) 2017, ordinarily payment for services rendered or supplies made should be released only after the services have been rendered or supplies have been made. The rule further provides for advance payment in case of maintenance contracts and fabrication contracts keeping adequate safeguards in the form of obtaining Bank Guarantees (BGs) from the firms.

13.3. Verification of Bank Guarantees

1. Bank guarantees submitted by the bidders/suppliers as EMD/performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/advance payments and for various other purposes are as follows:
 - a) BG shall be as per the prescribed formats.
 - b) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
 - c) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
 - d) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. 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;
 - e) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the

confirmation from issuing branch of the bank and forward the confirmation report to the Port.

2. Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.
3. Corporate Guarantee or Indemnity Bond shall not be accepted for Bid Security (EMD) or performance Security, or in lieu of any other Bank Guarantee (e.g., for advance payment/ warranty obligations).

13.4. Safe Custody and Monitoring of Instruments

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

- a) The Port shall also make institutional arrangements for taking all necessary actions on time for extension or forfeiture/ encashment or refund of EMDs and performance securities, as the case may be.
- 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 supplier/Consultancy firm for the purpose of extension of validity.
- e) A system of monitoring of securities and other instruments may be computerised with automatic alerts about lapse of validity etc.

Chapter-14

Prices, Payment Terms and Price Variations

14.1. Payment Clause

1. The elements of price included in the quotation of a bidder depend on the nature of the services to be performed and the nature of goods to be supplied, location of the supplier/consultant, location of the Port, terms of delivery/completion, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.
2. In case of Non consultancy services, the elements of price would depend on whether it is an input or input admeasurement contract. In case of input admeasurements unit price of each element, service charges and taxes thereon shall be the elements of price schedule. There may be miscellaneous costs also other than inputs. In case of output admeasurements unit price of services delivered and taxes thereon shall be the elements of price schedule.
3. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery/completion and also the duties and responsibilities to be performed by the supplier/consultant in addition to supply of goods/services.
4. **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up.
5. **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic bidders are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.
6. **Payment to Suppliers:** In a services contract, delivery of services is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the

one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions:

- a) As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. Any foreseeable payment delays should be communicated to the suppliers in advance;
- b) Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the Port must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.
- c) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;
- d) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or more than the contract rates should be allowed;
- e) Before the payment is made, the invoice should be cross-checked with the actual receipt of services to ensure that the payment matches the actual performance;

14.2. Terms of Payment

In non-consultancy contracts, the usual payment term is 100 (hundred) per cent on acceptance of delivered services by the ultimate user and on production of all required documents by the supplier.

1. **Modes of Payment for Domestic Goods:** Payments to domestic suppliers are usually made by cheque/demand draft drawn on a Government treasury or branch of RBI or any Scheduled Commercial Bank authorised by RBI for transacting Government business. Such payment can also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank.
2. **E-Payments:** e -Banking and e-payments are now used by various banks by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (NEFT/

RTGS) procedure. Payments to suppliers may be made through such mechanism where such facilities are available. As per RBI guidelines, ECS mandate in RBI's format may be obtained at the time of registration of suppliers and in the tender document. The Format is available with all Banks.

14.3. Advance Payment

14.3.1. Conditions for Advance Payments

1. Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases. Advance payment for mobilisation in Consultancy Contracts should be normally discouraged.
 - a) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
 - b) Advance payment demanded by firms against fabrication contracts, turn-key contracts; or supply of complicated bespoke goods and so on;
2. 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 PSU; or
 - c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
 - d) In exceptional cases, the Port may relax the ceilings mentioned above with prior concurrence of the Finance and approval of the Competent Authority.
3. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case-to-case basis. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, etc. should be obtained from the firm. Indemnity Bond is not to be considered in place of Bank Guarantee.

14.3.2. Documents for Advance Payments

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

14.4. Firm Price, and Variable Price

1. **Fixed price:** Short-term contracts where the delivery period does not extend beyond 12 (twelve) months should normally be concluded on a firm and fixed price (and not subject to variation on any account) by inviting tenders accordingly.

2. Variable Price:

- a) In Tenders with deliveries longer than 12 (twelve) months, Price Variation Clause (PVC) may be provided to protect the purchaser's interests, in particular for high value (more than Rupees three crore) procurements.

However, even for shorter deliveries, the price adjustment (or Price Variation Clause (PVC)) may be stipulated - especially for critical or high value (more than Rupees three crore) services – otherwise there is a possibility of the contract failing or the Port having to pay a higher price if prices fall.

- b) Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula (to take care of the changes in the input cost of labour, material, and fuel/ power components) should be provided in the tender documents, to calculate the price variation between the base level and delivery date.

It is best to proactively provide Port's own PVC formula and base dates of indices, in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

- c) The variations are to be calculated periodically (usually quarterly) by using indices published by Governments/ chambers of commerce any other neutral and fair source of indices.

Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and various applicable inputs e.g., material/ fuel/ labour (for which reliable indices are available), in the price variation formula.

- d) The following are essential elements of PVC:

- i) The price agreed upon should specify the base date, that is, the month and year to which the contract/ bid price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year.

The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;

- ii) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);

- iii) In rare cases prices may go up to such an extent, that it may render the contract unviable for either party, thus frustrating the contract.

Therefore, price variation clause should provide for a ceiling (a percentage per annum or an overall ceiling or both, say 20%/ 25%) on price variations, beyond which the price variation would be capped at this level.

As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for short-close the contract.

- iv) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- v) Where deliveries/services are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be recoverable on the price as varied by the operation of the PVC;
- vi) No upward price variation will be admissible beyond the original scheduled delivery/completion date for defaults on the part of the supplier. However, a downward price variation would be availed by the Port as per the denial clause in the letter of extension of the delivery period;
- vii) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Port.
- viii) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to 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 considered in the calculation of the price of the imported item;
- ix) The clause should also contain the mode and terms of payment of the price variation admissible; and
- x) The Port should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- xi) An illustrative PVC clause is available in Annexure-11

14.5. Statutory Taxes/ Duties/ Levies

14.5.1. Goods and Services Tax (GST)

1. GST Registration Status and GSTIN (15-digit registration number):
 - a) All the bidders/ Bidders should ensure that they are GST compliant and that their quoted tax structure/ rates are as per the GST Act/ Rules.
 - b) Bidder should be registered under GST and furnish their GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under a specific notification/ circular/ section/ rule issued by statutory authorities.
 - c) If the bidder has multiple business verticals in a state and has separate registrations for each vertical, the GSTIN of each vertical concerned with the supply and service involved, as per the scope of the Schedule of Requirements and Price Schedule shall be quoted.
 - d) If the supply/ service is from multiple states, the bidder should mention GST registration numbers for each state separately.
 - e) **Composition scheme:** If the Bidder has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.
 - f) **Exemption from Registration:** If a bidder is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. The bidder claiming exemption in this respect shall submit a valid certificate from a practising Chartered Accountant (CA)/ Cost Accountant with the Unique Document Identification Number (DIN) to the effect that the bidder fulfils all conditions prescribed in notification exempting him from registration. Such bidder/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Port directly to concerned authorities. Bidder should note that his offer would be loaded with the payable GST under the RCM. Further, the bidder should notify and submit to the Port within 15 days of becoming liable for registration under GST.
 - g) Bidders must also consider the benefits of input tax credit under the GST legislations, as amended from time to time, on Input goods/Capital goods / Input Services while quoting the prices.
 - h) In their bids, the bidders shall indicate the details of their GST Jurisdictional Assessing Officers (Designation, address, email ID). In case of a contract award, the Purchaser shall immediately forward a copy of the

LOA/Purchase Order to the Jurisdictional Assessing Officer mentioned in the bidder's bid.

- i) The Port's state-wise GSTINs shall be indicated in Tender Documents.

2. **HSN Code and GST Rate:**

- a) If provided in the Tender Document, the HSN (Harmonized System of Nomenclature) code for the goods is only indicative. The bidder shall be responsible for ensuring that they quote the correct HSN Code and corresponding GST rate for the goods they offer.
- b) As per the GST Act, the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separately from the bid/ contract price (exclusive of GST). So, if a Bidder asks for GST (and GST Cess if applicable) to be paid extra, the rate and nature of such applicable taxes should be shown separately. Bidders should quote 'GST' if payable extra on the total basic rate of each cost element and quote GST in '%' inclusive of cess.
- c) If the price is stated to include GST, the bidder must declare the current GST rate (and GST Cess, as applicable) included in the price.
- d) If GST, other taxes, or duties are not specified, or the column is left blank in the price schedule, it shall be presumed that no such tax/ levy is applicable or payable by the Port. No Statutory Variation in GST shall be paid in such a case.

3. **Statutory Duties/ Taxes/ Levies that are to be borne by the bidder:**

Following Statutory Duties/ Taxes/ Levies are to be entirely borne by the bidder, including any statutory variations thereon and the Port would not be responsible for these:

- a) **Personal and Corporate Tax:** Bidder shall bear all Personal/ Corporate taxes imposed on owners/ company/ Joint Venture/Subcontractors or their employees.
- b) **Taxes on Sub-Contractors, Vendors:** Bidder shall bear all taxes, including GST, as may be imposed on Contractor or supply-chain (sub-Contractors, Vendors, etc.).
- c) **Duties/ Taxes on Raw Materials:** The Port is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

14.5.2. Deduction of Income Tax from Payments

If applicable under relevant tax laws and rules, the Port shall deduct relevant taxes from all payments and deposit required taxes to respective authorities.

14.5.3. Statutory Variation Clause

- a) Unless otherwise stated in the contract, statutory variation in applicable GST rate, only during the period from the date of submission of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/ re-fixed delivery period of the contract shall be borne by the Port.
- b) The benefit of any reduction in the GST rate must be passed on to the Port during the original and extended delivery period.
- c) However, GST rate amendments shall be considered for the quoted HSN code only, against documentary evidence, provided such an increase in GST rates is after the tender submission date.
- d) However, the Statutory Variation shall not be applicable for any misquotation of the HSN number or incorrect GST rate by the bidder.

(Note: Re-fixed delivery period means the fresh delivery period, which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible.)

14.6. Recovery of Public Money from Supplier's Bill

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

14.7. Refund from Supplier

Sometimes, the supplier, after claiming and receiving reimbursements for GST, custom duty, and so on, from the Port, applies to the concerned authorities for refunds, on genuine grounds, of certain portions of such duties and taxes paid by it and receives the allowable refunds. Such refunds contain the Port's share also (out of the payments already made by the Port to that supplier). The tender enquiry document and the contract are to contain suitable provisions for obtaining such refunds from the supplier.

Chapter-15

Evaluation of Bids

15.1. Tender Evaluation Process

15.1.1. Basic Considerations

1. The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their tenders. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no bidder gets undue advantage at the cost of other bidders and/or at the cost of Port. The process of tender evaluation process is described in the subsequent paras in this chapter.
2. In case of single stage single envelop tendering, the evaluation of qualification of bidders, technical, commercial, and financial aspect is done simultaneously.
3. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. A technical proposal containing any material financial information shall also be rejected. Financial bids of such successful bidders only would be opened and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. TC shall evaluate financial bids with a view to select the lowest (L1) bidder who meets the eligibility criteria, qualification criteria and techno-commercial aspects.
4. In two stage bids, the PQB/ EoI stage would have already been evaluated as detailed in Chapter 8 and this second stage is for evaluation of responses to the second stage multiple envelopes from the shortlisted qualified bidders, following procedure described in sub-para 3) above.
5. **Contacting Port during the evaluation:** From the time of bid submission to awarding the contract, no Bidder shall contact the Port on any matter relating to the submitted bid. If a Bidder needs to contact the Port for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Port during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and bid shall be liable to be rejected as nonresponsive in addition to

other punitive actions for violation of Code of Integrity as per the Tender Document.

6. Consideration of Lack of Competition in OTE/ GTE and LTE [Rule 173 (xix), (xx), and (xxi) of GFR 2017]:

- a) Sometimes, against advertised/limited tender cases, the Port may not receive enough bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’, such situation of ‘Single Offer’ is to be treated as Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-tendering has costs: firstly, the actual costs of retendering; secondly, the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly, the possibility that the re-bid may result in a higher bid (As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021). Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:
 - i) The procurement was satisfactorily advertised, and sufficient time was given for submission of bids.
 - ii) The qualification criteria were not unduly restrictive; and
 - iii) Prices are reasonable in comparison to market values.
- b) However, as far as delegation/schedule of procurement powers (SoPP, refer Annexure-3) is concerned, competent authority would be as in Single tender mode. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.
- c) Unsolicited offers against LTEs should be ignored, however Port should evolve a system by which interested firms can register 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 registered vendors
 - iii) Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

7. Cancellation of Procurement Process/ Rejection of All Bids/Re-tender [Rule 173 (xix) of GFR 2017]

- a) The Port has the right to cancel the process of procurement or reject all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the Services and Activities Schedule or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to re- invite the bids, the Services and Activities Schedule should be critically reviewed/modified so as to address the reasons of not receiving any acceptable bid in the earlier Invitation for bids. The Port may cancel the process of procurement or rejecting all bids under circumstances mentioned below:
 - i) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the tender process;
 - ii) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - iii) none of the technical Proposals meets the minimum technical qualifying score;
 - iv) If effective competition is lacking. However, lack of competition shall not be determined solely based on the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
 - v) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
 - vi) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process.
- b) In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. It may be noted that once a Tender is retendered, the bids in the old tender can not be revived and reconsidered, as per the Indian Contract Act, even if prices received in the new tender turn out to be higher.

- c) Approval for re-tendering should be accorded by the Competent Authority based on the reasons/proper justification in writing. 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 and bids if not opened would not be opened and in case of manual tenders be returned unopened.
- d) Before retendering, the Port is first to check whether, while floating/issuing the enquiry, all necessary requirements, and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for tendering, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

15.1.2. Schedule of Procurement Powers (SoPP)

1. There are delegations upto a threshold value (called direct acceptance threshold, usually the threshold above which open tender is the norm – Rs 25 Lakhs at present) below which the evaluation of the Bids may be entrusted solely and directly by individual competent authority, without involvement of a Tender committee or any evaluation report. He would himself carry out all the steps in evaluation described below, instead of the TEC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from user departments, if so needed.
2. In procurements above such a threshold, evaluation is to be done by a Tender Evaluation Committee.
3. Member from proponent department of the Tender Evaluation Committee (or competent authority, in direct acceptance cases) shall receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.
4. Competent Authority (authority competent to approve the procurement of that value as per the SoPP)'s written approval must be taken at various stages of procurement, before proceeding ahead e.g.:
 - a) Administrative/ financial sanctions/ Issue of tender
 - b) Approval of Techno commercial evaluation and Opening of price bids in case of two packet system
 - c) Price Negotiations if permitted under specified circumstances.
 - d) Approval of Financial Evaluation and Award of contract to the selected bidder(s)
 - e) Cancellation of Procurement and Re-tendering

- f) In some special cases during Contract execution e.g. - exercise of the option clause or any variation beyond the laid down %age; forfeiture/ release of performance securities; premature termination/ foreclosure of Contract etc.
- 5. Wherever such competent authority is the Board of Director in a CPSE, obtaining approvals at so many stages, may delay the process and un-necessarily overburden the onerous tasks of such authorities. Therefore, in such cases their approval may only be taken at the stage of "Approval of Financial Evaluation and Award of contract". At other stages approval may be taken from the officer to whom such powers are delegated by the Board of Directors.
- 6. Port should lay down a Schedule of Procurement Powers (SoPP) detailing such thresholds. It can also lay down the powers, jurisdiction, and composition of various levels of Tender Evaluation Committee and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure 3, however exact values of threshold may have to be decided by Port themselves.

15.1.3. Timely Processing of Tenders

- 1. Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, Tentative complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Tender Documents.
 - a) Every official in the chain of the procurement operation is accountable for acting in a specified time so that the tender is finalised on time.
 - 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 Procurement File, where actual date of completion of various stages may be recorded.
 - d) The indicative time schedule for finalising contracts against various modes of procurements may be as under:
 - i) Opened Tender/ e-tender – (i) Indigenous – 45 days (ii) Imported – 60 days
 - ii) Procurement through registered vendors/ (Special) limited tender
 - (i) Indigenous – 30 days (ii) Imported – 45 days
 - iii) Proprietary basis/nomination basis.
 - (i) Indigenous – 21 days (ii) Imported – 30 days

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

15.1.4. Extension of Bid Validity Period

1. The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original bid validity period (Rule 174 (iii) of GFR 2017).
2. If, however, due to some exceptional and unforeseen reasons, the Port is unable to decide on the placement of the contract within the original validity period, it may request, preferably before expiry of the original validity period, all the responsive bidders to extend validity of their bids up to a suitable period.
 - a) They may also be requested to extend the validity of the Bid Security for the corresponding additional period.
 - b) A bidder may not agree to such a request, and this will not entail forfeiture of its Bid Security.
 - c) But the bidders, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.
 - d) Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions.
3. In case such refusal by bidder(s) to extend validity (or withdrawal of offer within validity if happens:
 - a) before completion of Techno-commercial evaluation, the Techno-commercial evaluation (including of the withdrawn bids) shall be completed. If a withdrawn bid qualifies in techno-commercial evaluation, financial bid(s) of such bidders shall also be opened, and action shall be taken as per sub-para below.
 - b) after Techno-commercial evaluation but before completion of financial bid evaluation, financial bid evaluation (including of withdrawn bids) shall be completed. If a withdrawn bid happens to be L1 bidder (lowest acceptable bidder, who is techno-commercially qualified, and would have been awarded a contract, but for his refusal to extend validity), the tender must be re-tendered.

15.2. Contacting Port during the evaluation:

From the time of bid submission to awarding the contract, no Bidder shall contact the Port on any matter relating to the submitted bid. If a Bidder needs to contact the Port for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. Any effort by a Bidder to influence the Port during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the

Code of Integrity, and bid shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

15.3. Preparation and Vetting of Comparative Statement

The representative of the Proponent department shall prepare a comparative statement of quotations (Technical and Financial) received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid, it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the Finance for veracity of information in case the bid is above Rs. 50 Lakhs.

Chapter-16

Tender Evaluation Committee

16.1. Role of Tender Committee (TEC)

16.1.1. Composition of Tender Evaluation Committee

1. For all cases having financial implications of more than Rs. 25 (Rupees Twenty-five) lakhs, a Tender Evaluation Committee, comprising of normally three members including a member from the proponent department, a finance member and a representative of the user department, shall be constituted as per SoPP, in order to carry out the tender evaluation and award of contract.
 - a) The representative of the proponent department will work as a convenor of the TEC. The TEC should not be very large as it may slow down the evaluation process.
 - b) However, suitable domain/technical experts from the user department (or otherwise) may be included in the committee to render assistance in evaluation of the bids.
 - c) As per Rule 173 (xxii) of GFR 2017 no member of the tender committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 25 lakhs.
 - d) The TEC shall be responsible for all aspects and stages of the tender evaluation.
 - e) Tender Evaluation committees may be constituted with the approval of one level higher than the Competent Authority.
 - f) It is advantageous for Port doing procurements regularly to have pre-nominated (by designation) Tender Opening and Tender Evaluation committees for various categories and value-slabs of procurements included in the SoPP.
 - g) There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc.
 - h) Even in case of procurements by direct negotiations or by special limited tenders having financial implications of more than Rs 25 (Rupees Twenty-five) Lakhs, the TEC shall evaluate the tenders.
2. After the proposals have been opened, the evaluation process can begin. Before starting the evaluation, the TEC members should ensure that they
 - a) understand the evaluation criteria;

- b) have been provided with evaluation worksheets; and
- c) Agree on how to evaluate the proposals.

16.1.2. No Conflict of Interest

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

1. Members of the TEC should not have any conflict of interest and should not directly engage in any communication with bidders from the date of their appointment to the date on which the contract is awarded.
2. TEC duties are to be discharged personally by the nominated officers.
 - a) They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions.
 - b) TEC members cannot co-opt or nominate others to attend deliberations on their behalf.
 - c) TEC deliberations are best held across the table and not through circulation of notes.
 - d) 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, until the award of contract is notified to the successful firm, except that after technical evaluation, the overall technical score shall be informed to all service providers for each criterion or sub-criterion, if any, as required in the Tender document.
 - e) Under no circumstances, Tender file or confidential information contained therein shall be provided for scrutiny or for decision to any person/ office who are not involved in decision making.
3. All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TEC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement.
 - a) They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person.
 - b) They should sign a declaration at the end of their reports/notings stating that, *"I declare that I have no conflict of interest with any of the bidder in this tender."*
 - c) TEC members may also make such a declaration at the end of their reports.

4. During the processing of the tender, all references/grievances/ complaints/ directives/ request for information from any sources including higher level officials/ authorities within the Port or from outside may be forwarded to the TEC/Convener of TEC for its examination on merits and action as considered necessary, maintaining independence, impartiality, confidentiality and 'No Conflict of Interest.' An interim reply may be provided that the Tender is still under consideration and that final response would be given after the declaration of the award of contract.

16.2. Handling Dissent among Tender Committee

1. All members of the TEC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TEC members
 - a) 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) The Competent Authority can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.
2. 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.
3. However, if the TEC, after considering the views of the Competent Authority, sticks to its own earlier recommendations, the Competent Authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

16.3. Tender Evaluation Committee Recommendations/Report

1. The TEC must make formal recommendations (Annexure-7) 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.
 - a) It is a good practice that TEC should spell out salient terms and conditions of the offer(s) recommended for acceptance.
 - b) It should also be ensured by the TEC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TEC; otherwise, there may be delay in acceptance of the contract by the supplier.

- c) These recommendations are submitted for approval to the tender accepting authority-
- d) In any purchase decision, the responsibility of the Competent Authority is not discharged merely by selecting the cheapest offer or by accepting TEC recommendations, but he must ensure that:
 - 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.
- 2. After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued. (Rule 189 of GFR 2017)

16.4. Preliminary Examination of bids

16.4.1. Evaluation of responsiveness of Bids

1. A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements, without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Other bids shall be treated as unresponsive and ignored. All bids received shall first be scrutinised to identify unresponsive bids, if any. Some important points based on which a bid may be declared as unresponsive and be ignored during the initial scrutiny are:
 - a) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the tender document;
 - b) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
 - c) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder must be a registered MSE unit, but the bidder is a, say, a large-scale unit);
 - d) The bid departs from the essential requirements specified in the tender document (for example, the bidder has not agreed to give the required performance security); or
 - e) Against a schedule in the list of requirements in the tender enquiry, the bidder has not quoted for the entire requirement as specified in that

schedule (example: in a schedule, it has been stipulated that the bidder will supply the skilled manpower and shall not change until the completion of the contract, but he has quoted only for a certain period).

- f) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the Tender Document.
 - g) The bid validity is shorter than the required period.
 - h) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations.
2. **Evaluation of eligibility:** Port shall determine, to its satisfaction, whether the Bidders are eligible as per the eligibility criteria in the Tender Document to participate in the Tender Process. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as unresponsive.
3. **Non-conformities between Figures and Words:** Sometimes, non-conformities/ errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:
- a) If, in the price structure quoted for the required goods/services, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
 - b) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail, and the total shall be corrected; and
 - c) If there is a discrepancy between words and figures, the amount in words shall prevail.
 - d) Such a discrepancy in an offer should be conveyed to the bidder asking him to respond by a target date and if the bidder does not agree to Port's observation, the tender is liable to be rejected.
4. **Discrepancies between Original and Additional/ Scanned Copies of a Tender:**
- a) Normally, as far as feasible, no submission of original documents in physical format (other than Cost of Tender Documents, if any, Bid Security and statutory certificates if any, should be asked for in e-Procurement.
 - b) In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder.
 - c) In offline tenders, discrepancies may be observed in responsive tenders between the original copy and other copies of the same tender set.

- d) If discrepancies exist between the uploaded scanned or other copies and the originals submitted by the bidder, the original copy's text, etc., shall prevail.
- e) The issue is to be taken up with the bidder in the same manner as above and subsequent actions taken accordingly.
- f) Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in addition to other punitive actions under the Tender Document for violation of the Code of Conduct.

5. Deviations/ Reservations / Omissions - Substantive or Minor

- a) During the evaluation of Bids, the following definitions apply:
 - i) "Deviation" is a departure from the requirements specified in the Tender Document;
 - ii) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
 - iii) "Omission" is the failure to submit part, or all the information or documentation required in the Tender Document.
- b) A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
 - i) Which affects in any substantive way the scope, quality, or performance of the product;
 - ii) Which limits in any substantive way, inconsistent with the Tender Document, the Port's rights, or the Bidder's obligations under the contract; or
 - iii) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
- c) The decision of the Port shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive.
- d) Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the Goods/services specified in the Tender Document shall not influence evaluation Bids. If the bid is otherwise successful, such benefits shall be availed by the Port, and these would become part of the contract.
- e) During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some bids. Such minor issues

could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document.

- i) There have been also cases where the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of the document. The court ruled that this is a minor irregularity.
- ii) The Port reserves the right to accept bids with such minor issues provided they do not constitute any substantive deviation and do not have fiscal impact and, also, do not prejudice or affect the ranking order of the bidders. any minor deviations.
- iii) Wherever necessary; the Port shall convey its observation, on such 'minor' issues to Bidder as per sub-para below.
- iv) If Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

6. Clarification of Bids/Shortfall Documents

- a) The TC evaluation should be based on the proposal as submitted. During evaluation and comparison of bids, Port may, at their discretion, ask the bidder for clarifications on the bid.
 - i) The request for clarification shall be given in writing by registered/speed post, asking the bidder to respond by a specified date, mentioning therein that, if the bidder does not comply or respond by the date, his tender will be liable to be rejected.
 - ii) Depending on the outcome, such tenders are to be ignored or considered further.
 - iii) Under no circumstances can the TEC request information or clarifications that may change the proposals.
 - iv) No change in prices or substance of the bid, which may grant any undue advantage to such bidder, shall be sought, offered, or permitted.
 - v) No post-bid clarification at the initiative of the bidder shall be entertained.
- b) The Port reserves its right to, but without any obligation to do so, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the Bid Opening, and which have not undergone change since then and does not grant any undue advantage to any bidder.
 - i) There is a provision on the portal for requesting Short-fall documents from the bidders.

- ii) The system allows taking the shortfall documents from any bidders only once after the technical bid opening. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the bidder has not provided them, these documents may be asked for with a target date as above).
- iii) As far as the submission of documents is concerned regarding qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for to qualify the bidder.

16.4.2. Evaluation of the Techno-commercial Bids

1. **General Norms:** Only substantively responsive bids shall be evaluated for further evaluation.
 - a) In evaluating the techno-commercial bid, conformity to the eligibility/qualification criteria, technical specifications, and Quality Assurance; and commercial conditions of the offered Services to those in the Tender Document is ascertained.
 - b) Additional factors incorporated in the Tender Document shall also be considered in the manner indicated therein.
 - c) Bids with substantive techno-commercial deviations shall be rejected as nonresponsive.
 - d) Port reserves its right to consider and allow minor deviations in technical and Commercial Conditions.
 - e) Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded.
 - f) It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids (in case of offline bid) must be ensured before their opening.
 - g) All the financial bids may preferably be put in a large envelop, which may be dated, sealed, and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.
2. **Evaluation of Qualification Criteria:** Port shall determine, to its satisfaction, whether the Bidders are qualified and capable in all respects to perform the contract satisfactorily (subject to dispensation if any, for Start-ups, as per Tender conditions).

- a) Any criteria not specified in the tender shall not be used for evaluation or qualification.
 - b) This determination shall, inter-alia, consider the Bidder's Experience/ Past Performance, Performance and Financial Capabilities; for satisfying all requirements incorporated in the Tender Document.
 - c) The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.
 - d) The Techno-commercial evaluation establishes whether a proposal passes the minimum qualifying mark (or technical score) provided for in the Tender Document.
 - e) The Port should be prepared to debrief bidders to explain the evaluation of their proposals.
3. **Evaluation of Conformity to Performance Standards and Quality Assurance:** The Port shall examine the Performance Standards and Quality Assurance; Methods Statement, Work Plan, and Inputs Deployment Plans (Manpower, Machinery and Materials) to ensure conformity to performance standards and quality assurance.
4. **Evaluation of Conformity to Commercial and Other Clauses:** Bidder must comply with all the Commercial and other clauses of the Tender Document.
- a) The Port shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the Tender Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder.
 - b) Deviations from or objections or reservations to critical provisions identified in the Tender Documents will be deemed to be a material deviation.
 - c) If critical provisions are not explicitly stated in the Tender document then these shall be taken to be as per Governing laws.
5. **Technical Evaluation Report:** At the end of the technical evaluation process, the TC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the Competent Authority's approval.
- a) For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the Tender Documents and comment on their acceptability.
 - b) The committee shall record in detail the reasons for acceptance or rejection of the bids analysed and evaluated by it.

- c) The Competent Authority may ask the TEC to explain the report but should not request that scores be changed.
 - d) It should review the TEC's evaluation of each proposal (on technical, contractual, and other aspects).
 - e) The Competent Authority should decide how any acceptable deviation in each proposal should be handled during contract formulation, in case that proposal is ranked first.
 - f) The technical evaluation report is a confidential document, and its contents shall not be disclosed.
 - g) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.
 - h) A sample format for preparation of technical evaluation report and financial evaluation report including award recommendation to the competent authority is given at Annexure-7.
6. **Declaration of Results:** Bids that succeed in the techno-commercial evaluation shall be considered techno-commercially suitable, and financial evaluation shall be done only of such Bids.
- a) The list of such techno-commercially suitable bidders and a date/time and venue for the opening of their financial bids shall be declared on the Portal and individually to all participant bidders in accordance.
 - b) In such a case, the opening date shall not be later than three weeks after the notification date.
 - c) The Port shall also notify those bidders whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the criteria laid down in the Tender Document.

16.5. Financial Evaluation

16.5.1. General Norms for Ranking of Financial Bids

1. The financial proposals (in offline tenders) shall be opened publicly in the presence of representatives of the technically qualified service providers who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them.
2. For a time-based contract, any arithmetical errors shall be corrected, and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the bidder is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made.

3. For the purpose of evaluation, the total cost shall include all taxes and duties for which the Port makes payments to the service provider and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the Tender document
4. Unless otherwise stipulated, evaluation of the financial bids shall be on the price criteria only. Financial Bids of all Techno-commercially suitable bids are evaluated and ranked to determine the lowest priced bidder.
5. Unless otherwise stipulated, the comparison of the responsive Bids shall be on total outgo from the Port, to be paid to the contractor or any third party, including all elements of costs as per the terms of the proposed contract, duly delivered, commissioned, etc. as the case may be, including any taxes, duties, levies etc.
6. Unless otherwise stipulated, if the Schedule of Requirements contains more than one schedule, the financial ranking of bids shall be done based on all schedules put together. The bid for a schedule shall not be considered if the complete requirements prescribed in that schedule are not included in the bid;
7. If any bidder offers conditional discounts/ rebates in his bid or suo-motu discounts and rebates after the Bid Opening (techno-commercial or financial), such rebates/ discounts shall not be considered for ranking the offer. But if such a bidder does become L-1 without discounts/ rebates, such discounts/ rebates shall be availed and incorporated in the contracts;
8. Unless announced beforehand, the quoted price shall not be loaded based on deviations in the commercial conditions. If it is so declared, such loading of a financial bid shall be done as per the relevant provisions;
9. As per policies of the Government, from time to time, the Port reserves its option to give purchase preferences to eligible categories of Bidders as indicated in the Tender Document.
10. Financial evaluation of Bids shall include and consider the following taxes/ duties.
 - a) in the case of Services performed in India or incidental goods of foreign origin already located in India, GST & other similar duties, which shall be contractually payable, on the Services and incidental Goods, if a contract is awarded on the bidder;
 - b) The offers shall be evaluated based on the GST rate quoted by each bidder, and the same shall be used for determining the inter-se ranking. The Port shall not be responsible for any misclassification of HSN Number or incorrect GST rate if quoted by the bidder. Any increase in GST rate due to misclassification of HSN number shall have to be absorbed by the supplier; and
 - c) If GST is quoted extra, but with the provision that it shall be charged as applicable at the time of delivery, the offer shall be evaluated for comparison

purposes by loading the maximum existing rate of GST for the product/ HSN code.

11. **Price Variation:** If the tenders have been invited on a variable price basis, the tenders shall be evaluated, compared, and ranked based on the position as prevailing on the last deadline for techno-commercial bid submission and not on any future date.
12. **Ambiguous Financial bid:** If the financial bid is ambiguous and leads to two equally valid total price amounts, it shall be rejected as nonresponsive.
13. **Instances of Multiple L1s:**
 - a) In number of cases, especially non-consultancy services, multiple L1s may emerge in a tender. However, the method of selection of successful contractor in case of multiple L1 should be decided prior to issue of tender. GeM provides following two options to choose the vendor to be engaged in case of multiple L1s:
 - i) System determined vendor selection.
 - ii) Purchaser can select the vendor.
 - b) Multiple factors may weigh upon the decision of selecting the successful contractor.
 - i) GeM system-based selection could be more transparent, however, it takes away the discretion with Port to select a particular contractor, without any financial repercussion, on the basis of past experience in a particular department.
 - ii) On the other hand, there may be instances where Port may be more comfortable with system based L1 selection method.
 - iii) Hence, the decision on the method of selection of successful contractor in case of multiple L1s, Bid documents may provide for a qualification criterion considering past experience.
 - iv) Normally past experience in supply of service at a particular station or to Central Government Ministries/ Departments is considered too restrictive.
 - v) However, in case such restriction is considered essential the same may be provided for in the bid documents, duly recording reasons for such decisions on the file.

16.5.2. LCS Selection

Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered

for award of contract. The TEC will put up a report on financial evaluation of the technically qualified service providers to the competent finance authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

16.5.3. SSS selection

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

16.5.4. QCBS Selection

Please refer to Appendix-NCSM-S2/A12 where use QCBS selection in procurement of NC Services is permitted. The Appendix also details competent authority and grounds for declaring a procurement as Quality Oriented Procurement (QOP), for use of QCBS method. It also covers the role of STC (or Technical Committee in case of NC Services) for fixing parameters of the QCBS selection and the procedure for evaluation of QCBS Bids.

16.5.5. Global Tender Enquiry

If stipulated in the TIS/ AITB that this is a Global Tender Enquiry (International Competitive Bidding), the following additional aspects of the evaluation of the financial offer shall also apply:

a) Currency of Tender

In GTE tenders, if permitted in AITB, the bid price may be in foreign currencies, except for expenditure incurred in India (including incidental Works/ Goods delivered in India and agency commission, if any) which should be stated in Indian Rupees.

b) Evaluation of Offers

- i) For financial evaluation, all Bids shall be converted to Indian Rupees based on the "Bill for Collection (BC) selling" exchange rate on the last deadline for the bid submission (Techno-commercial offer) from a source as specified (State Bank of India, if not so specified) in the tender document. The offers would be compared based on the principle of the total outgo from Port's pockets, including all applicable taxes and duties (Customs duty, GST, and GST Cess). For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from the Port's bankers) should also be loaded. Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Custom Assessable Value' plus the 'Basic Customs duty applicable thereon'.
- ii) The terms FOB, FAS, CIF, DDP etc. shall be governed by the rules & regulations prescribed in the current edition of INCOTERMS, published by the International Chamber of Commerce, Paris

16.5.6. Evaluation Process in Tender cum e-Reverse Auction

If it is specified in TIS/ AITB that this is a Tender cum e-Reverse Auction Tender Process then, the e-Reverse Auction process shall be mandatorily conducted on the same portal after the financial bid opening (declaration of L-1 landed price/ s), provided the number of valid bidders is not less than the stipulated number (3 if not specified). Unless otherwise stipulated following procedure shall be followed:

1. Shortlisting of bidders eligible to participate in e-Reverse Auction:

- (a) The bids disallowed from participating in the Reverse Auction(e-RA) shall be the highest bidder(s) in the tabulation of prices in the financial bid. If the highest bidders quote the same rate, the Price Offer received last, as per the time log of the Portal, shall be removed first, on the principle of last in first out by the system.
- (b) If the number of valid bidders is less than the minimum stipulated number (or 3 if not specified), a Reverse auction shall not be conducted, and the financial bids shall be evaluated. In the case of 4 to 6 valid bidders lowest three (3) bidders shall be allowed to participate in the reverse auction. In the case of more than 6 valid bidders, only 50% of the bidders (rounded up to next integer) shall be allowed to participate.
- (c) However, if MSE bidders or Class-I Local suppliers under the Make in India policy do not come under the above criteria, but their prices in financial bids are within the policy's margin of preference, they shall be allowed to participate. Such bidders would be over and above the short-list mentioned above.

2. Reverse Auction Process (RAP)

Note: If the Portal RAP process is different from the one described below, the portal provisions shall prevail.

- (a) Upon opening the financial bids, a reverse auction platform shall be created. The reverse auction shall start within the specified period (two hours if not specified) of the bid. There shall be no participation fees for the e-Reverse auction.
- (b) Unless modified by TIA, L-1 landed price in financial bid (as per the calculation schema based on the Tender Document evaluation criteria) shall be the start bid price on which the auction shall be initiated.
- (c) The TIA shall specify the decrement value before starting the e-Reverse Auction (or, if not specified, 0.5% of the start bid price rounded off to the next unit, tens, hundreds, thousands etc., with a minimum of Rs. 1). The reduction shall have to be made as per decrement value or in multiple thereof.

- (d) An initial period of the reverse auction shall be as stipulated (or two hours if not specified). All times and periods are as per server time-stamp. There shall be auto extensions of time by specified minutes (ten minutes if not specified) in case of any reduction recorded in the last auto-extension period. The Maximum number of auto extensions shall be as stipulated (or 50 if not stipulated).
 - (e) In case of service disruption at the service provider's end during the reverse auction, the reverse auction process shall start all over again, with the last recorded lowest price of prematurely ended RAP as the 'Start bid' price. The prices quoted in the prematurely ended RAP shall be binding on all the bidders for consideration if the restarted process does not trigger within the stipulated time (or by 5.00 pm on the same day, if not stipulated). Disruption and restarting of RAP shall be intimated to all the bidders through system/ SMS/ e-mail through the e-procurement portal.
3. Bidders must submit only the landed price in the reverse auction, and only the item-wise L-1 price shall be displayed without disclosing the number of bids and names of the bidders. The landed price would not be the same for two bidders, even if any bidder makes such an attempt. While evaluating the bids, the exchange rate captured by the e-procurement system shall be considered for converting foreign currency into Indian Rupees.
 4. On the auction's closing time expiry, the bid history showing all the last valid bids offered along with the name of the bidders shall be published. All bidders shall have the facility to see and get a print of the same for their record.
 5. All electronic bids submitted during the reverse auction process shall be legally binding on the bidder. Only the chronologically last bid submitted by Bidder until the end of the auction shall be considered the valid financial bid of Bidder, and consideration of the same for entering into a contract by the Port shall bind on the bidder. If a bidder does not submit his bid in the Reverse Auction, the price quoted in the financial bid shall be considered the valid price of that bidder. The status of Bidder (L-1, L-2 etc.) shall be evaluated considering either the bid price submitted in Reverse auction or the Price quoted in the financial bid, whichever is lower.
 6. The successful L-1 bidder, after the reverse auction, has to upload within a stipulated period (within 2 working days, if not specified) the breakup of Landed Prices in the shortfall documents, at which the contract shall be awarded. While giving the breakup, the Bidder shall include the same taxes and duties as quoted while submitting the financial bid. If the L-1 bidder fails to submit the breakup of landed price within the stipulated period, the Port shall place an order based on the breakup of the financial bid submitted by Bidder, and the same shall be binding on the bidder.

7. Purchase Preference

Short-listed bidders, eligible for any purchase preference policy as per the Tender Document, shall get an opportunity to match the L-1 prices concluded after the reverse auction if their final prices in Reverse Auction fall within the permitted percentage.

16.5.7. Reasonableness of Rates Received

Port shall evaluate whether the rates received in the Bids in the zone of consideration are reasonable. If the rates received are considered abnormally low or unreasonably high, it reserves its right to act as per the following sub-clauses, or reject any or all Bids; abandon/ cancel the Tender process and issue another tender for identical or similar Services.

16.5.8. Consideration of Abnormally Low Bids

1. An Abnormally Low Bid (ALB) 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.
 - a) Port may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document.
 - b) If, after evaluating the price analyses, 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, and evaluate the next higher bidder (and so on), at his/ their own quoted rate (and not by counteroffering rate of ALB), for award of contract.
 - c) However, it would not be advisable to fix a normative percentage below the estimated cost, which would automatically be considered as an abnormally low bid.
 - d) Due care should be taken while formulating the specifications at the time of preparation of tender document to have a safeguard against the submission of abnormally low bid from the bidder.
2. In the case of predatory pricing as well, Port may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders.
3. No provisions should be kept in the Tender Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority competent to finalise the particular tender, or the MD, whichever is lower.

16.5.9. Cartel Formation/ pool rates

(For details of legal aspects please refer Chapters on Legal Aspects of Public Procurement' of the Goods Manual)

1. Sometimes a cartel of bidders quotes the equal/ marginally different rates (pool rates) against a tender whereas possibly:
 - a) Rates quoted (and breakup thereof) are equal, despite their manufacturing/ logistics costs being different due to their scale of production/ location.
 - c) Rate manages to be L1.
 - d) In a variation, the rates may not be exactly equal but may close enough to make the Cartel members as L1, L2, L3 etc.
 - e) Respective quoted quantities by these bidders are much less than the tendered quantity, leaving no option but to distribute quantities among these bids.
 - f) Their bids have other uncanny similarities, i.e., same layout or typographical errors.
2. In case this rate is unreasonably high, this may be an attempt to force acceptance of higher rates by undermining negotiating power of the buyer as per rules. Even when rates are reasonable, this may be an attempt to force the Port to distribute quantities as decided by the bidders among them, even in tenders where splitting of quantities is not envisaged.
3. Such cartel formation/ pool rates abuse the transparency of Public Procurement and is a violation of the code of Integrity for Public Procurement. Such and similar tactics by bidders to avoid/ control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) is an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007.
4. Such abnormal practices need to be severely discouraged with strong measures. To discourage such practices, Port may include in all tender documents a Cartel Formation/ Pool Rates clause, stating inter-alia that, Port reserves its rights to take following actions, without assigning any reasons thereof, in case a Cartel/ Anti-competitive practice is suspected in a tender:
 - a) Specify in Tender Document that are prone to such practices, that bidders must bid for at least a quantity that is more than a minimum specified percentage (say 20%/ 30%) of the tendered quantity, otherwise their offer shall be rejected.
 - b) Warn that Port may take any/ all punitive actions available under the Code of Integrity for Public Procurement against such bidders, including removal from the list/ panel of registered sources or debarment, besides reporting

the transgression to Competition Commission, and concerned trade associations like FICCI, ASSOCHAM, NSIC for suitable punitive action.

- c) Port may decide the tender as per one or more of following provisions:
 - i) Reject all bids from the suspected cartel formation and decide the tender accordingly.
 - ii) Place order on any one or more firms (from among the cartel) for any quantity with exclusion of the rest, with or without negotiation or counteroffering.
 - iii) *Note: The selection of firms for this may be based on a transparent logistics parameter i.e., quicker delivery, nearer location of source, relatively better past performance, etc.*
 - iv) Whenever tender is floated for purchase exclusively from pre-qualified/ approved sources, and cartel formation is suspected among such sources, Port may place orders on sources outside the pre-qualified/ approved sources for any quantity.
 - v) Wherever a specified ratio for splitting of quantities among 2/ 3 sources is stipulated in the tender document, and cartel formation is suspected among lower 2/3 bidders, place order on any number of firms beyond such ratios or decide tender as per sub para-a) or b) above.

5. Certain Procurement decisions facilitate Cartel formation. Need Assessment and Procurement Planning is the main stage where this menace can be addressed effectively:

- a) Inadequate competition, due to inadequate number of suppliers in the list/ panel of registered suppliers may empower bidders to conspire against the Port:
 - i) New firms may be encouraged to get themselves registered for the subject goods.
 - ii) Review of Technical Specification (especially bespoke specification) may be done, to examine, why a commercially available alternative cannot be used instead, or at least review its features so that more suppliers become eligible. Consider using substitute items or new developments in the Market.
- b) Processes, like pre-bid conference, where considerable number of competing bidders come together on a platform, facilitate bidders to conspire such cartel formation. This may be avoided as far as feasible or be held only virtually.

- c) Tendering similar quantity with similar condition, year on year, provides a stable conspiring environment for the bidders to come to an agreement, for quoting prices and quantities. Therefore, following action can be considered to vary quantity and conditions to make it difficult for cartels:
 - i) Change the mode of procurement - OTE instead of LTE; or GTE instead of OTE; or bypassing pre-qualification stage and vice versa.
 - ii) Change the quantity to be procured by packaging/slicing of the tendered quantity or by clubbing more than one similar item in a tender (or vice versa).
 - iii) Change the pre-qualification criteria, especially in case of slicing/ packaging, to broaden the target bidders.

16.5.10. Negotiations for Reduction of Prices

1. Negotiation (Rule 173 (xiv) of GFR 2017) with bidders after bid opening must be severely discouraged.
 - a) However, in exceptional circumstances where price negotiation (including in post Reverse Auction tenders) is necessary due to some unavoidable circumstances, it should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate.
 - b) In no case, including where cartel rates are suspected, should negotiations be extended to those 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 price negotiations may not be considered except under following exceptional circumstances:
 - d) Where, L1 price is not considered to be reasonable, and
 - i) the procurement is done on nomination basis or
 - ii) Procurement is from single or limited sources; or
 - iii) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of immediate requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tender process.
 - iv) Where there is suspicion of cartel formation which should be recorded, following provisions of para 16.5.9 above.

2. 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. Convincing reasons must be recorded by the authority recommending negotiations. The Competent Authority should exercise due diligence while accepting a tender, ordering negotiations, or calling for a re-tender and a definite timeframe should be indicated.
3. Normally all counter-offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter-offer to L1, 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. Similarly dynamic bids in Reverse Auction process are not to be considered as negotiations.
4. After the Competent Authority has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - b) The bidder to be called in for negotiations should be addressed as per the format of letter laid down in Annexure-14, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
 - c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure-15; and
 - d) Revised bids should be obtained in writing from the selected bidders at the end of the negotiations in the format of letter laid down in Annexure-16. The revised bids so obtained should be read out to the bidders or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be considered. In case a bidder does not submit the revised bid, its original bid shall be considered.

16.5.11. Evaluation of Concurrent Application

MSE and Make in India Policies

The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring

predictability both to the procuring entities as well as bidders, guidelines were issued by DoE. These guidelines are explained in Appendix-NCMS-S2/A8, along with examples.

16.1.14. Evaluation of Bids – Risks and Mitigation

Risk-1

Evaluation of bids is subjective or leaves room for manipulation and biased assessments. Some TEC members may not be independent or neutral or may have conflict of interest (Col).

Mitigation-1

TEC should give an undertaking at the appropriate time that none of the members has any Col with the companies/agencies participating in the tender process. Any member having an Col with any company should refrain from participating in the TEC. Some members of a TEC may be subordinate to or related others in a strictly hierarchical organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TEC.

Risk-2

Discriminating against a Best Value Bid: In case a bidder's bid (not in the good books 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 favourite becomes best value bid:

Mitigation-2

Mitigation for each type of risk is mentioned below.

Risk-3

Unwarranted retendering: Rejecting all bids and calling for retendering on the pretext of prices being high, change of specifications, budget not being available, and so on.

Mitigation-3

In case a procurement is rebid more than once, approval of one level above the CA may be taken. Please also see the complaint mechanism.

Risk-4

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

Mitigation-4

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

Risk-5

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

Mitigation-5

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.

Risk-6

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

Mitigation-6

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 TEC's acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.

Risk-7

Anti-competitive practices: Bidders, which would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a tender

process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.

Bid coordination: The bidders collude to quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.

Cover bidding: Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.

Bid suppression: Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.

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.

Market allocation: Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.

Mitigation-7

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.

Chapter-17

Award of Contract

17.1. Port's Rights

1. Right to Vary Quantities at the Time of Award:

At the time of contract award, the Port reserves the right to increase or decrease without any change in the unit prices or other terms and conditions of the bid and the Tender Document, the quantum of Services originally stipulated in Schedule of Requirements, provided this increase/ decrease does not exceed 25 (twenty-five) percent of tendered quantity (or any other percentage indicated in the Tender Document).

2. Parallel Contracts or Splitting of Award

The Port reserves its right to split the quantities and conclude Parallel contracts with more than one bidder (for the same tender) in the following circumstances:

- a) Unless otherwise stipulated in TIS/ AITB, there shall be no parallel orders or splitting quantities among more than one Bidders.
- b) However, if the Tender Document stipulates such parallel contracts due to the critical/ strategic/ specific nature of the Services, the manner of deciding relative share of the lowest bidder (L-1) and the rest shall be clearly defined, along with the minimum number of Bidders sought (subject to availability of suitable bids meeting the requirements) for the contract. In such cases, the bidders should not quote for less than 25% of the tendered quantity; otherwise, their offer shall be rejected as nonresponsive. Unless otherwise stipulated in the AITB, in case of splitting in two and three, the ratio of 70:30; 50:30:20, respectively shall be used. These ratios are approximate, and the Port reserves its right to marginally vary quantities to suit capacity/ past performance of the bidder/ unit loads of packing or transportation/ relative ranking of the bids/ delivery period offered/ existing load of Bidder and other similar factors affecting smooth delivery of Services as per requirements.

17.2. LoA to Successful Bidder

1. Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details of requirements) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities.

A template for the Letter of Award (or Notice of Award, or Acceptance of Tender) is given in Annexure-17.

- a) In the same communication, the successful bidder is to be instructed to furnish the required performance security within a specified period (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount).
 - b) Letter of Award - LoA shall state the sum (hereinafter and in the contract called the "Contract Price") that the Port shall pay the contractor in consideration of the supply of the Goods/services.
 - c) The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below.
 - d) The Port, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.
2. Before issuing a Letter of Award (LoA) to the successful Bidder(s), the Port may, at its discretion, ask Bidder to submit for verification the originals of all such documents whose scanned copies were submitted online along with the Technical bid.
 - a) If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement.
 - b) If the Bidder fails to provide such originals or in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity.
 - c) Such bid shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Tender Document.
 - d) The evaluation of Bids shall proceed with the subsequent ranked offers.
3. The value of Contract should include Taxes/ duties/ levies, if any.
4. In respect of contracts for Procurement of Non-Consultancy Services valued below Rupees two and a half lakh, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.
5. In some cases, successful bidder (an OEM or an agent representing a principal firm) requests that the Contract may be placed on their subsidiary or an authorised dealer. This is legally not acceptable as the Contract can only be placed on the bidder in whose name the bid has been submitted, not on any third party.
6. It shall be mandatory for the successful bidder to get registered on GeM and obtain a unique GeM Seller ID. before the placement of LoA or the contract. This ID shall be incorporated in the contract.

17.3. Publication of Award of Contract

1. **Mandatory Publication of Award of Contract:** The details of award of contract and name of the successful bidder should be mentioned mandatorily on the CPPP/ GeM (as relevant) and in the notice board/bulletin/website of the concerned Ministry or Department/e-Procurement Portal. [Rule 173 (xviii) of GFR 2017]
2. **Exceptions to Publishing of Award of Contract:** Open, transparent declaration, of price, sources, and delivery schedule of Central Public Sector Enterprises (CPSEs) suppliers as per extant instructions adversely impacts ability of CPSEs to compete in highly competitive market. CPSEs are denied a level playing field. At the time of tender formulation, commercial organisations like CPSEs will disclose whether the subject of procurement is for commercial re-sale. Contract Award details of such cases may be shared on electronic Procurement Portals such as GeM, Central Public Procurement Portal (CPPP) etc. after six (06) months of finalization of procurement. Such a system shall protect financial data of the CPSEs for a reasonable time while also complying with requirement of transparency.
3. **Bid Securities:** Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified, and their bid security be returned without interest within 30 (thirty) days of notice of award of contract. The successful supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

17.4. Performance Security

The supplier receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form within period prescribed in the tender document (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount. In case performance security is not submitted within the stipulated time, Port may pursue the contractor up to a reasonable grace period further for submission. In case the firm fails to submit the requisite Performance Security even thereafter or fails to sign the contract it may be treated as withdrawal of offer by L1 bidder, and the tender may be reinvited, besides taking necessary punitive actions including forfeiture of EMD against such bidders.

17.5. Acknowledgement of Contract by Successful Bidder and Execution

After the successful bidder is notified that his bid has been accepted, the contractor/Service provider should acknowledge and unconditionally accept the work order/LOA 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.

17.6. Framing of Contract

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

1. 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
2. In the Non-consultancy Services contract, the accepted Services and Activities Schedule and methodology etc are laid down in form of ‘Description of Service’.
 - a) Therefore, before the contract is finally awarded, discussions may be necessary with the selected bidder to freeze these aspects, especially when, it is discouraged during evaluation of technical proposals to seek clarifications on these matters.
 - b) However, such technical discussions do not amount to negotiations in the sense, the word is used in Procurement of Goods and Works.
 - c) These discussions should not have financial ramifications and are not an essential part of the selection process.

- d) In many cases, however, it is felt necessary to ensure meeting of minds with the selected bidder the Services and Activities Schedule, methodology, staffing, Port's inputs, and special conditions of the contract.
 - e) These discussions shall not substantially alter (or dilute) the original Services and Activities Schedule or terms of the offer, lest the quality of the final product, its cost, and the initial evaluation be vitiated.
 - f) The final Services and Activities Schedule and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.
3. 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.
4. Standard forms of contracts should be invariably adopted, except in following cases:
- a) Authorities competent to make purchases may, at their discretion, make purchases of value up to Rupees two and a half lakh by issuing purchase orders containing basic terms and conditions;
 - b) 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
 - c) 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.

17.7. Procurement Records

1. The Port must maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. 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 tendering;
 - d) Documents relating to pre-qualification and registration of bidders, if applicable;
 - e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
 - f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
 - g) Bids evaluated, and documents relating to their evaluation; and
 - h) Contracts and Contract Amendments
 - i) Complaint handling, correspondences with clients, service providers, banks.
2. The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Tender Document and documents relating to its formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TEC report) relating to pre-qualification, evaluation, Award of Contract; and finally, the Contract copy, should be kept on the file.
3. 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.
4. 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.
5. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

Chapter-18

Special Types of Non-Consultancy Procurements

18.1. Expression of Interest (Eoi)

18.1.1 Expression of Interest (EOI) for Shortlisting of Service Providers

1. Unlike Procurement of Consultancy Services, procurement of Non-consultancy services is done by a simpler process akin to those of procurement of Goods and Works. (Rule 206 of GFR 2017). It is normally done in a Single Stage Process containing Technical and Financial bids. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc), there is a danger of low-quality bids getting selected for award of contract by quoting unsustainably low price. To ensure that competition is not vitiated by low-quality bids, competition may be restricted only among equally qualified bidders. Therefore, instead of publicly inviting all interested bidders to present their bids; the EOI shortlisting process (similar to procurement of consultancy services) involves obtaining limited number of proposals from a pre-qualified firms that, in the Port's view of experience, are capable and can be trusted to deliver the required services at the desired level of quality.
2. These considerations can be best addressed through competition exclusively between qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Such procurement needs to be done in a two-stage process.
 - a) In the first stage of procurement (the EOI stage), the qualified firms are shortlisted transparently.
 - b) In the second stage bids (Technical and Financial) are solicited from such shortlisted bidders to select the winning bidder.
 - c) Care should be taken to avoid formation of unreasonable qualification criteria prior to shortlisting of bidders that may lead to restricted participation.
3. For procurement above Rs 50 (Rupees Fifty) Lakhs (Rule 183 (ii) of GFR 2017) shortlisting is done in an openly advertised competitive shortlisting process called Expression of Interest (Eoi), giving equal opportunity to all interested bidders to be considered for shortlisting.
 - a) Under Eoi the "Request for Expression of Interest" (REoi) is advertised on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM) and also on Port's website.

- b) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
 - c) A complete Services and Activities Schedule should be ready before requesting EoI.
 - d) Attention of known reputed Service Providers may also be separately drawn wherever possible.
 - e) The advertisement must include, among other things, the last date of submission of EoI, how to get/ download copy of the EoI document including Services and Activities Schedule, contact information of the Port with the name of contact person, and so on.
 - f) In case it is felt that likely Service Provider may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries. (Refer restriction on floating GTE for tenders below Rs. 200 Crore).
4. Adequate time should be allowed for getting responses from interested bidders. The Port shall make available copies of the EoI document to the interested bidders in hard copies as well as on its website.
5. **Important Conditions of EoI:** Similar to Model Tender Document for Procurement of Consultancy Services, eligibility and qualification criteria for shortlisting should be specified in the EOI document.
6. In procurements of Non-consultancy services below Rs 50 (*Rupees Fifty*) Lakhs, (*Rule 183 (i) of GFR 2017*) shortlisting is done without a formal published Expression of Interest (EoI), akin to a Limited Tender Enquiry (LTE) process.
- a) To start with, the preparation of a long list of potential service providers may be done on the basis of formal or informal enquiries from other Ports/Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.
 - b) The Port should scrutinise the preliminary long list of likely contractors as identified above and shortlist the *prima facie* eligible and capable contractors from the long list.
 - c) The number of service providers in this moderated long-list should not be less than three.
 - d) In case sufficient service providers cannot be located, then the responses may be called from lesser number of bidders, but not less than three in any case, after taking Competent Authority's approval.

- e) If the complexity of the project so justifies, a formal EoI may be advertised as in sub-para 3) above, even for procurements below Rs 50 (*Rupees Fifty*) Lakhs, with the approval of Competent Authority.

7. **Empanelment of Service Providers:** To smoothen this shortlisting for NC services below Rs 50 (*Rupees Fifty*) Lakhs, Port which do frequent procurement of Non-consultancy services, may consider preparation of a panel of qualified Service Providers, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods.

- a) Performance of such empanelled contractors should be reviewed periodically.
- b) The list of registered contractors shall be updated on a regular basis.
- c) The category/ class of contractors may be upgraded/ downgraded, or contractors may be de-listed based on their performance.
- d) Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity (Notified under para 9.3 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021)

8. The EoI document shall contain following sections:

- a) Letter of Invitation: It shall include a copy of the advertisement whereby service providers are invited to submit their EoI.
- b) Instructions to the Bidders: It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;
- c) Description of Services - Brief Purpose and Scope of Work: This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Time-frames; inputs to be provided by the Port; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for EoI shall not include the Services and Activities Schedule.
- d) Qualification Criteria: This may clearly lay down the qualification criteria which shall be applied by the Port for short listing the service providers.

The REoI should ask for sufficient information so that the Port may evaluate the service providers' capabilities and eligibility to undertake the assignment. Information should include:

- i) core business and years in business;
- ii) qualifications in the field of the assignment;
- iii) technical and managerial organisation of the firm; and

- iv) general qualifications and number of key staff. In addition, the service providers should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services.

Service Providers should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the Tender stage.

No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested.

Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

- e) A sample format for seeking an EoI is given at *MTD for Procurement of Consultancy Services*.

18.1.2. Short List of Service Providers

1. The Port shall evaluate the service providers for shortlisting, inter-alia, based on their past experience of handling similar types of projects, strength of their manpower and financial strength of the firm. For example, it is important to find out if the firm:
 - (i) is a small specialised firm or a large firm with access to a pool of expertise;
 - (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and
 - (iii) has appropriate certification in in-house quality control (firm adheres to the requirement of International Organization for Standardization - ISO) as relevant to the task and has an ethics code in place.
2. It is important for the Port to hire service providers by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.
3. Finally, if the same firm is considered for concurrent service packages, the Port shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However, this needs to be pre-declared in the EoI documents.
4. The Port may assign scores to the response of each service provider based on weightages assigned to each of the criteria in the EoI. Each criterion may be subdivided into sub-criteria, if called for. Normally, the weightages shown in Table 1 may be used for such an evaluation (this is just an indicative criterion to assist the evaluators. The criteria and their weightage may be changed as per the need of Port).

Table 1. Qualification criteria and their weightages

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

5. The Port shall short list all the service providers who secure the minimum required marks [normally 75% (seventy five percent)]. The minimum qualifying requirement shall be specified in the EoI document.

In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/ sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years' experience and must have Professional Qualification in relevant field; Firm must have a turnover of at least Rs 10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.

6. However, this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified service providers who have the required experience and qualifications to deliver the required services at the desired level of quality.
7. The short lists shall normally comprise at least three firms (*Rule 184 of GFR 2017*) but not more than eight (to avoid inordinate delays in evaluation of subsequent Tender). Subsequent Tender documents would be issued only to the shortlisted service providers.

8. The evaluation committee may submit its EoI Evaluation report to Competent Authority for approval. Tender Committee format at Annexure-7 can be mutatis-mutandis used for this purpose.

18.2. Single Source Selection (SSS)

1. Selection of service providers through direct negotiations does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices.
 - a) The reasons for SSS and selection of a particular service provider must be recorded and approved by the Competent Authority as per the delegation of powers laid down at in DPFR/SoPP, prior to single tendering.
 - b) Powers of procurement of SSS must be severely restricted.
 - c) Therefore, single-source selection shall be used only in exceptional circumstance, where it is inescapable over competitive selections as discussed in sub-paras below.
2. When in a Project, continuity for downstream work is essential, the initial Tender document shall outline this prospect, and, if practical, the factors used for the selection of the service provider should take the likelihood of continuation into account.
 - a) Continuity in the technical approach, experience acquired, and continued professional liability of the same service provider may make continuation with the initial service provider (subject to satisfactory performance in the initial assignment) preferable to a new competition.
 - b) For such downstream assignments, the Port shall ask the initially selected service provider to prepare technical and financial proposals on the basis of Services and Activities Schedule for subsequent services, which shall then be negotiated.
3. If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process shall normally be followed in which the service provider carrying out the initial work is not excluded from consideration if it expresses interest.
4. For selecting a service provider under this method, the Port should prepare a full justification and take the approval of the competent authority as per the Delegation of Powers.
5. While selecting the service provider under this method, the Port shall ensure that the service provider has the requisite qualification and experience to undertake the assignment. Normally the Port shall adopt the same short-listing criteria as applied to similar assignments while evaluating the EoI.

6. It is responsibility of Finance Department to ensure that a statement of all selections by nominations, every month are to be reported to MD/Chairman.

18.3. Selection of Individual service providers

1. Individual service providers are normally employed on assignments for which
 - a) Teams of personnel is not required;
 - b) No additional outside professional support is required, and
 - c) The experience and qualifications of the individual is the paramount requirement.
2. The procedures for selecting individual service providers are similar to, but much simpler than, those for selecting service provider agency. Process of selection of Individual service providers entails:
 - a) Preparing a Non-consultancy services package including the Services and Activities Schedule, time frame, number of person-months, budget, eligibility and qualification criteria and getting it approved by the Competent Authority;
 - b) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
 - c) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Port.
 - i) Candidates who are already employed with the Port shall meet all relevant qualifications and shall be fully capable of carrying out the assignment.
 - ii) Capability is judged on the basis of professional background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation.
 - iii) Selection will be carried out by the TEC which will award marks for educational/ professional qualifications and experience and select the most suitable candidate for the assignment.
 - iv) The TEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

- d) **Direct Negotiation:** Individual service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as:
 - (i) tasks that are a continuation of previous work that the service provider has carried out and for which the service provider was selected competitively;
 - (ii) emergency situations resulting from natural disasters; and
 - (iii) when the individual is the only service provider qualified for the assignment. Individual service providers may be (among others) independent service providers; service providers recruited from firms; or service providers recruited from academic, government, or international agencies.
- e) **Staff or Associates of service provider Firms:** If the candidate is permanent staff or associates of a firm the conflict-of-interest provisions described in these guidelines shall apply to the parent firm.

18.4. Selection of Specialized Agencies/ Institutions

1. From time to time, Port may need to recruit a specialized agency or institution to undertake a specific Non-Consultancy Service, for which it is particularly well suited. Such agencies may be Government/ Semi-Government Agencies, Universities or Professional Institutions.
2. In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of Port.
3. In cases, of Government and semi-Government Agency, SSS would be an appropriate method of recruitment.
4. Individual service providers recruited from agencies and institutions may be selected in the same way as any other independent service providers.

18.5. Selection of Non-governmental Organizations (NGO)

1. Non-governmental organizations (NGOs, not-for-profit organisations) may be hired for NC Services, if they express interest and/ or if the Port finds their qualifications satisfactory. Assignments which emphasize experience in and bonding with grassroot historically disadvantaged communities, e.g., experience in community participation and in-depth local knowledge are typically attributed to NGOs and short lists may comprise NGOs entirely. In this case, the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:
 - a) History of work with grassroots communities and evidence of satisfactory performance;

- b) Familiarity with participatory development approaches and low-cost technologies;
 - c) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
 - d) Committed leadership and adequate management;
 - e) Capacity to co-opt beneficiary participation.
2. Port may select NGOs using SSS, provided the approvals and procedures laid down for the same are followed. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available, and competition is impractical.

18.6. Procurement Agents

1. Hiring of Procurement agents (PAs) can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment.
 - a) If the role of Procurement Agents primarily involves intellectual analysis, strategic planning, spend analysis, cost control, and advisory functions, it would be appropriate to hire them as Consultancy Services i.e. when they are asked to design/ implement new system or improve value for money or develop strategic procurement or carry out market building/ sourcing etc, where quality weightage of more than 30% is called for.
 - b) On the other hand, if their responsibilities are only outsourcing of routine procedures without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable, i.e. when they only operate the existing procedures and decisions are made by the client himself, where quality weightage can be 30% or less.
2. Procurement Agents as outsourcing of Non-consultancy services, may be hired by the Port to handle the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they may be selected under QCBS.
3. When PAs provide support for whole project in a specific unit of Port, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures using QCBS and time-based contracts.

18.7. Inspection Agents

1. Hiring of Inspection agents (IAs) to inspect and certify goods before shipment or on arrival in the Port country, can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment.

- a) The inspection by such agents usually covers the assurance of quality and quantity of the goods concerned, but occasionally they may be entrusted with related services.
 - b) If the role of Inspection Agents primarily involves intellectual analysis, inspection of highly sophisticated machinery/ goods, inspection of non-measurable parameters it would be appropriate to hire them as Consultancy Services i.e. when non-repetitive inspection of goods requiring intellectual judgement or carry out vendor rating or provide inputs on reasonableness of prices etc, where quality weightage of more than 30% is called for.
 - c) On the other hand, if their responsibilities are only operational/ procedural, standardized goods/ commodities, without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable, i.e. when they only inspect within the established protocols, repetitive work without intellectual inputs where quality weightage can be 30% or less.
2. Inspection agents may be selected using QCBS. Payment is usually based on a percentage of the value of goods inspected and certified.

18.8. Housekeeping Services

In the case of Housekeeping/ cleaning services, GeM platform provides for Options based on

- a) Floor Area wise cleaning and
- b) Manpower.

Usually, the floor area wise cleaning option is more cost effective. Accordingly, before a tender is floated, an exercise maybe undertaken to determine the option, which is considered beneficial for the Port, duly recording reasons for such decision on file.

18.9 Manpower Outsourcing Services

1. Hiring of manpower through contracts should be avoided to ensure no future legal problems as these employees may demand regularization afterwards.
 - a) Even, if employed, there should be no direct correspondence with such people.
 - b) Even I-cards should be issued indicating the person to be representative of the contractor (name of the contractor to be mentioned).
2. Least Cost System (LCS) should be considered (DoE, MoF's OM NO.F.6/1/2023-PPD Dt 06/01/2023) for procurement of Manpower Outsourcing Service, wherever appropriate, especially in high value cases.

3. In the procurement of Manpower Outsourcing Service, the minimum service charges (DoE, MoF's OM NO.F.6/1/2023-PPD Dt 06/01/2023) may be fixed as 3.85% (3% profit plus transaction charges, which are 0.85% at present). The procuring entities can also fix the service charge above 3.85% with proper justification on file, wherever required.
 - a) However, such charges should not exceed 7% (including transaction charges) in any case.
 - b) This stipulation is not applicable to Non-consultancy Services contracts involving Manpower plus Materials.

18.10. Private Security Manpower Services

1. Security services offer protection for life and property against theft, pilferage, fire etc., safety to manpower, guiding visitors to the premises, regulating entry of unwanted visitors, salesmen and maintenance of visitors register.
 - a) This is one of the most frequently outsourced Non-Consultancy services.
 - b) The Private Security Agencies (Regulation) Act, 2005 (PSARA) regulates the functioning of private security agencies in India.
 - c) A PSARA license and labour licence are required for any person or entity that wants to operate a private security agency in India.
 - d) The state government (in which the agency will be operating) issues these licenses.
2. Due to Operational and administrative reasons, around 60,000 skilled Armed Forces Personnel (skilled to undertake security guards related duties) are retired (Ex Servicemen - ESM) every year to maintain a youthful profile of the Armed Forces. Security Agencies (with ESM Officer as proprietor and other ESM as Security Supervisors/ Guards) are empanelled for "Provision of Security Services" by (Directorate General Resettlement – DGR, Department of Ex Servicemen Welfare – DESMW) to facilitates resettlement of ESM. These agencies have to employ ESMs as security guards/ supervisors in at least 90% of the deployed workforce. DGR monitors these agencies through reports/ returns.
3. The 'Empanelment Certificate' by DGR is issued (only to eligible ESMs having labour licence and PSARA certification in the relevant State) for a duration of five years (05) or up to the date when ESM Proprietor turns Sixty (60) years whichever is earlier.
4. DGR empanelled agencies/companies are only eligible through DGR sponsorship. DGR empanelled agencies / companies are not eligible for participating in the Tender Enquiry directly i.e. without DGR sponsorship. DGR

Sponsored security agencies do not need to fulfil minimum experience, minimum turnover qualifications.

5. Security Man Power Service for CPSEs and Government establishments is governed by orders from Ministry of Defence and Department of Public Enterprise (DPE). As per these instructions, CPSEs and Government establishment must avail Security Services only from DGR empanelled Ex-Servicemen (ESM) Security Service Providers.
6. Since these services are available on GeM, procurement of these services through “Security Manpower Service” (under the Manpower Resource Outsourcing Service) functionality on GeM portal becomes mandatory. On this functionality, Port can upload their requirements in the web-based format. DGR issues a sponsorship letter to at least three ESM Service Agencies based their criteria to participate in such requirements on GeM.
7. Selection of a Service provider is based on the service charges quoted over the minimum wages. In no case service charges may be negotiated by CPSEs below the rate prescribed by DGR in its guidelines for empanelment of ESM Security Service Agencies from time to time (which is 14% at present). In the eventuality of all the DGR sponsored Agencies quoting the same rates, the Port shall award the contract to the senior-most sponsored Agency. The order of seniority of sponsored agencies / private limited companies / corporation has been indicated in the sponsorship letter”.
8. Rest of details in uploading requirements and finalising the contract are available on the GeM portal.

18.11. Procurement of IT Services

Procurement of IT services, involve considerable intellectual inputs, hence these should be handled as procurement of Consultancy Services. Such procurements are done using QCBS selection method with 80%:20% weightages for Quality: Price.

Chapter-19

Monitoring Non-Consultancy services Contract

19.1. Contract Management

19.1.1. The Purpose of Contract Management

1. The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored, and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timelines, quality of outcomes, discharge of Consultant/ Service Provider's contracted obligations, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that "we get what we pay and contract for and pay for only for what we get." Normally, the following issues are handled in management of Services Contracts:

a) **Contract Execution:**

- i) Issuing the notice to proceed;
- ii) Meetings and Reviews
- iii) Amendments/ variations to the contract;
- iv) Obligations Control: Monitoring that key experts and contracted resources are actually employed.
- v) Safeguards for handing over Port materials/equipment to contractors;
- vi) Resolving problems faced by consultants/ service providers;
- vii) Dispute resolution and arbitration;
- viii) Breach of contract, remedies, and termination of services prior to the end of the contract;
- ix) Contract closure upon completion;

b) **Scope Control:**

- i) Deciding on possible modifications to scope of work and issuing contract variations;
- ii) Monitor that all deliverables are delivered as per contract - reports including draft final report and the final report.

- iii) Quality assurance: Review quality of outcomes at inception phase, mid-term and final phase.
 - iv) Service Level Agreement (SLA) monitoring.
 - c) **Time Control:** Monitoring progress and delays in timelines/ milestones of assignment;
 - d) **Cost Control:**
 - i) Billing, payment and monitoring the expenditure vis-à-vis progress;
 - ii) Release of final payment and guarantees (if any) and closing the contract;
 - e) **Post contract evaluation.**
2. Due to lack of physically/ tangibly measurable outcomes in Services contracts, intense and continuous monitoring of the Contract by the Port is essential for the success of the assignment.
- a) Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the Consultant/ Service provider or to suspend payments till satisfactory progress has not been achieved.
 - b) A Contract Monitoring Committee (CMC) shall be formed by the Port to monitor the Contract.
 - c) The Port should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power and authority as the nodal person to interact with the consultant/ service provider's team.
 - d) A system of reporting may be developed so that a statement covering all ongoing Consultancy/ Service contracts may be submitted within the Department in detail and from each Department in summary form to the Board, so as to enable Management by Exception based on various Risk and Mitigation strategies pointed out at relevant process milestones in this manual. (Rule 195 of GFR 2017).

19.1.2. Costs of Delays in Contract Management Decisions

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

19.1.3. Contract Monitoring Committee – (CMC)

1. The Port shall constitute a CMC comprising at least three members at the appropriate level, including the user's representative, after the selection procedure is over for monitoring the progress of the assignment.
 - a) If considered appropriate, the Port may select all or any of the members of TEC as members of CMC.
 - b) If required, Port may also include individual experts from the government/ private sector/ educational/research institute or individual consultant/ service providers in the CMC.
 - c) The cost of such members, if any, shall be borne by the Port.
 - d) The CMC shall be responsible for monitoring the progress of the assignment, to oversee that the assignment is carried out as per the contract, to assess the quality of the deliverables, to accept/reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.
2. For the assignments which are very complex and/or are of highly technical nature, the Port may decide to appoint another qualified consultant/ service provider to assist the CMC in carrying out its functions.

19.2. Contract Execution**19.2.1. Issuing Notice to Proceed, Kick-off Meeting and Pre-requisites**

1. A notice to proceed is required to initiate Non-consultancy services. It is normally issued as soon as possible after the contract has been signed. After the issuance of the notice to proceed, the contract normally commences upon the arrival of the consultant/ service provider or the Consultancy team's members at the premises of the Port, if so required under the description of services.
2. A kick-off meeting is held, where the parties discuss and make sure that they are on same page as far as the outcomes and the contract management issues are concerned. The Port and the consultant/ service provider agree on the detailed content of outputs - inception, progress, and final report. Schedule of meetings and reviews are also laid down during this discussion.
3. Before issuing notice to proceed, the Port and the consultant/ service provider should check that all pre-requisites for the contract execution are in place:
 - a) Supervising/monitoring arrangements (including CMC) are in place;
 - b) Port's counterpart staff (including counterpart project manager) are nominated and are available;

- c) Facilities to be provided by the Port as per the contract are ready for use by the service provider;
- d) All parties involved in the assignment (users, security team and other relevant departments) are informed;
- e) All key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
- f) Guarantees and advance payments, if any, are implemented;
- g) All authorisations (if needed) are provided.

19.2.2. Review of Inception Phase

For more complex consultancies, the work is divided into phases, of which one of the most critical is the inception phase. The inception phase covers the submission and review of the work plan with the Port, and the initiation of the field work. The service provider shall submit to the Port for approval a Program showing the general methods, arrangements, sequencing, and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. Resulting from the factual study of ground situation by the consultants/ service providers, following issues will need resolution at end of the inception phase:

- a) Overall, Scope of Work;
- b) Work Plan and Staffing Schedule;
- c) Specific Activity schedule;
- d) Access to Professional and Logistic Support;
- e) Working Arrangements and Liaison

19.2.3. Monitoring of Progress

1. **Monitoring of progress:** The timing, nature, and number of reports that the service provider should provide are normally contained in the services contract.
 - a) If the assignment is of a routine nature over a long period (for example, housekeeping services), then monthly, quarterly, and annual progress reports may be required.
 - b) On the other hand, if the assignment is to implement a particular task, a more specific type of reporting may be required.
 - c) Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the Competent Authority, so that they can be addressed at the earliest opportunity.

2. **Monitoring Physical Outputs/ Outcomes:** Especially in Non-consultancy services, progress of physical outcomes/ outputs has also to be monitored. There should be a stipulation in the contract for large value works (magnitude to be specified), for the Service Provider to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:
- a) Project information, giving the broad features of the contract.
 - b) Introduction, giving a brief scope of the work/ Services and Activities Schedule under the contract.
 - c) Progress of assignment through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
 - d) Progress chart of the various components of the assignment that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
 - e) Plant and machinery statement, indicating those deployed, and their working status.
 - f) Man-power statement, indicating individually the names of all the key-staff. Monthly or fortnightly progress review by engineer and Port with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.
 - g) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
 - h) A statement showing the variations/ change requests submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken, if any, the advances received and adjusted from the department, etc.
 - i) Progress photographs/ videography, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work. Use of Geotagging (adding geographical metadata - latitude and longitude coordinates) in photos, videos, reports, may help in monitoring physical progress on the ground. Such information would also be useful later during use of such facilities.
 - j) Quality assurance and quality control tests conducted during the month, with the results thereof.

- k) Any hold-up shall be specified.
 - l) Dispute, if any, shall also be highlighted.
3. **Monitoring a Time-based Contract:** The performance of a time-based contract may depend on the progress in other contracts. In such situations, the mobilisation and demobilisation of resources/ key experts and time employed by them should be mobilised and monitored carefully. These situations could lead to claims and disputes.
 4. **Monitoring a Lump-sum Contract:** As Lump-sum contract is based on output and deliverables, it is important that the quality of services is checked carefully before release of stage payment as subsequent dispute after completion of the task could lead to disputes. In this form of contract, if there are extra additional services, there should be timely amendment to the contract to reflect these increases and to regulate payment. In general, in a lump-sum contract, the increase should not be more than 10-15 (ten to fifteen) per cent.

19.2.4. Issuing Contract Amendments/ Variations

1. The formal method of making and documenting a change in the Non-consultancy services contract is through a contract variation.
 - a) There are few Non-consultancy services contracts of any type that do not require a contract variation at one time or another.
 - b) Contract variations are issued when there are agreed-upon changes in the scope of work, personnel inputs, costs, timing of the service delivery, or out-of-pocket expenditures.
 - c) Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation.
 - d) No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor.
 - e) Where it becomes necessary/ inescapable, any modification shall be carried out with the prior approval of the Competent Authority.
2. Normally, the request for contract variation is prepared by the service provider and submitted to the Port. However, these can also be initiated by the Port, suo-moto. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Port, it shall be assumed that the contractor has consented to the amendment.
3. To take care of any change in the requirement during the contract period, there could be situations wherein variations in the scope of work becomes necessary.

- a) These situations should be dealt with objectivity and fairness and should not be considered to unduly push the vendor to undertake work or take risks which was not explicitly communicated in the tender document.
 - b) At the same time the vendor should not consider this as an opportunity to unduly charge the Port due to lack of available options.
 - c) Generally, the value of the change request should not be more than plus/minus 15 (Fifteen) per cent.
 - d) The Tender document should contain detailed mechanism through which such change requests would be carried out.
 - e) The decisions of CMC (both technical as well as financial) should be considered as final.
 - f) Wherever variation is done through such a committee, all the members should sign the minutes of the recommendations.
4. No amendment shall be binding on the Port unless and until the same is written and signed/ authorised by a competent authority.
 5. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Finance concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

19.2.5. Obligations Control

1. **Unsatisfactory Performance by Personnel:** Poor performance may involve one or more particular staff from the service provider's team, or the whole team or non-participation by the main qualifying JV member.
 - a) Based on the provisions of the contract, the Port will advise the service provider to take the necessary measures to address the situation.
 - b) Poor performance should not be tolerated; therefore, the service provider should act quickly to comply with a reasonable request to improve the performance of the team or to replace any particular staff member who is not performing adequately.
 - c) If the service provider fails to take adequate corrective actions, the Port may take up the issue with the top management of the service provider and issue notice to rectify the situation and finally consider terminating the contract.
2. **Changes in Constitution/ Financial Stakes:** The Contractor must proactively keep the Port informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract, since that may vitiate the legal basis of the Contract. Where the contractor is a partnership firm, the

following restrictions shall apply to changes in the constitution during the execution of the contract:

- a) A new partner shall not be introduced in the firm except with the previous consent in writing of the Port, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
 - b) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Port may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.
 - c) If the contract is not terminated as provided in Sub-para (b) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Port in writing or electronically.
3. **Obligation to Maintain Eligibility and Qualification:** The contract is awarded to the contractor based on specific eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract.
- a) Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the Port within 7 days of it coming to the Contractor's knowledge.
 - b) These changes include but are not restricted to change regarding any declarations in this regard made by it in its bid.
4. **No Assignment/ Sub-contracting:** The contractor shall not, save with the previous consent in writing of the Port, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever.
- a) He shall notify the Port in writing all subcontracts awarded under the contract if not already stipulated in the contract, in its original bid or later.
 - b) Such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract.
 - c) Subcontract shall be only for bought out items and incidental Works/ Services.
 - d) Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations.

- e) If the Contractor sublets or assigns the contract or any part thereof without such permission, the Port shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.
5. **Indemnifying Port regarding Intellectual Property (IPR):** All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Port and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Port's prior written consent.
- a) The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Port, together with a detailed inventory thereof.
 - b) The contractor shall indemnify the Port against any breach of third party's IPR.
 - c) The Contractor (and its allied firms) shall maintain confidentiality and secrecy of Port's information provided to it (or that it comes across during execution of Contract).
6. **Performance Security:**
- a) The Contractor must maintain the Performance Security of the required amount in specified format during the currency of the Contract. In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within twenty-eight days of issue of the amendment.
 - b) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Port at its discretion at its discretion to either terminate the Contract for breach of contract and avail any or all contractual remedies, or without terminating the Contract, recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the Port or the Government or any person contracting through the Procuring Organisation or otherwise.
 - c) The Port shall be entitled, and it shall be lawful on its part, to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
 - i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance of contract in all respects under reference or any other contract with the Port or any part thereof;

- ii) for any loss or damage recoverable from the contractor which the Port may suffer or be put to for reasons of or due to above defaults/ failures/ neglect;
 - iii) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Port shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
 - d) The performance security should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided.
7. **Obligations under the Labour Codes and Rules:** The Contractor is solely responsible for its obligation under Labour Codes and Rules relating to personnel deployed by it on-site or off-site for execution of the contract. However, the Port should pro-actively monitor that such obligations are discharged by the contractor. Contractor shall be asked to submit relevant reports and returns.
 8. **Obligations Relating to Occupational Safety, Health, Working Conditions, Social Security, and Industrial Relations Requirements:** Contractor is legally bound to comply with statutory requirements regarding accommodation, Creche, safety, Hygiene, Health and Medical facilities, Government Welfare Schemes, etc. He shall be asked to maintain adequate records in this regard. The Port shall proactively monitor that such obligations are discharged.
 9. **Obligations relating to Site, Environmental Laws, and Third Parties:** The Contractor has obligations regarding safety and security of the site used by him. He has to comply with laws relating to environment at the site. He also is liable for any injury/ damage to third party personnel and properties as a result of his activities at the site.
 10. **Obligations to Maintain Insurances:** Contractor must maintain Insurance cover at his own cost against all such risks as mentioned in the contract. Port has to ensure that these Insurance Cover are adequate and current during the contract execution.
 11. **Obligations regarding Permits, Approvals and Licenses:** Contractor must obtain and keep current all permits, approvals and licences that are needed as per law for delivery of services.

19.2.6. Safeguards for Handing over Port Materials/Equipment to Contractors

For performance of certain contracts, Port may have to loan stores, drawings, documents, equipment, and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor.

- a) In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis.
- b) Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee.
- c) In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary.
- d) The Contractor shall use such property for the execution of the contract and no other purpose whatsoever.
- e) These assets shall remain the property of the Port, and the contractor shall take all reasonable care of all such assets.
- f) The contractor shall be responsible for all damage or loss from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workers, or agents.
- g) As a measure of transparency, the possibility of provision of such resources by Port should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract.
- h) Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities, and assets loaned, including all ID cards and gate passes, and so on, in good condition.
- i) Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on.
- j) For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

19.3. Controlling Scope of Supply and Quality**19.3.1. Scope of Services**

- 1 The Contractor must perform/ delivery Services of the description, scope/ quantum, performance standards and quality outlined in the contract during the contract Period specified therein.
 - a) The Services shall conform to performance and quality standards as stipulated in the contract or as per the best standards in the market, where not so specified.

- b) The Services shall include all incidental works/ Goods and such other work-elements not mentioned explicitly in this Contract, but that can be reasonably inferred from the Contract as being required for attaining Completion of the Services.
- 2 The contractor shall perform the Services and its obligations with all due diligence, efficiency, and economy, observing sound management practices, and employ appropriate advanced technology and safe methods as per the performance standards and quality control parameters stipulated in the contract.

For matters where the contract does not specify any Standard, the Services delivered shall conform to National/ International Standards or generally accepted professional techniques and practices.
- 3 In cases where the performance or/and quality of Services is/are found to be unsatisfactory, Port shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, 0.5% percent (or any other percentage prescribed) of the delivered price (including elements of GST & freight) of the defective Services, If the contractor fails to perform the Services as per Performance Standards and Quality, without having to prove actual loss incurred.

19.3.2. Deployment of Resources and Penalty for Absence

- 1. Service Provider must deploy the contracted resources, maintaining adequate records of attendance and audit trails.
- 2. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the Port shall not be liable for any dues for availing the services of the personnel.
 - a) The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the Port.
 - b) The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.
- 3. **Penalty for absence:** In the case of absence (apart from allowed leaves) of a resource during project period, no payment will be made for the days a resource is absent (Daily wage will be calculated by dividing man month rate by number of working days in that month).
 - a) In addition, a penalty (say 5% of the daily wage) per working day per resource will be levied on such absence.
 - b) Fraction of a day in reckoning period in supplies shall be eliminated if it is less than half a day.

- c) Penalty would be deducted from the applicable payments.

19.3.3. Quality Control

1. The Port shall check the quality of the Services and shall inspect the contractor's performance according to the Contract. The Port shall promptly notify the contractor of any identified defects, requesting the correction of the notified defect within a reasonable time.
2. If the contractor has not corrected notified defect within the time stipulated in the Port's notice, the Port shall assess the cost of having the defect corrected. Without prejudice to any of its other remedies under this Contract or applicable law, Port shall be legally entitled to deduct such cost from the contract's payments, together with the damages for the shortfall in performance (as per clause below), a sum equivalent to the percentage stipulated in the contract.
3. If the service provider has not corrected a Defect within the time specified in the Port's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in the contract.
4. It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ports/Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors (Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017).

19.3.4. Service Level Agreement (SLA)

1. A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:
 - a) Identify and define the Port's needs;
 - b) Eliminate unrealistic expectations on either side;
 - c) Provide a framework for understanding between the service provider and the Port;
 - d) Reduce areas of conflict and encourage dialog in the event of disputes

2. While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.
3. SLA has two sets of elements:
 - a) Service elements
 - i) the services to be provided (and perhaps certain services not to be provided, if Port might erroneously assume the availability of such services);
 - ii) conditions of service availability;
 - iii) service standards, such as the timeframes within which services will be provided
 - iv) the responsibilities of both parties
 - v) escalation procedures in case of performance deficiencies
 - b) Management elements
 - i) how service effectiveness will be tracked
 - ii) how information about service effectiveness will be reported and addressed
 - iii) how service-related disagreements will be resolved
 - iv) how the parties will review and revise the SLA- Conditions warranting change; Change frequency and Change procedures

Chapter-20

Time Control

20.1. Contract Period and Options

1. Unless otherwise stipulated in the contract, the contract Period for which the Service shall be provided shall be one year from the effective date of the contract, unless completed earlier or terminated as per the contract.
2. If stipulated in the contract, the Port shall have the right to exercise the following options, by written notification to the contractor no later than thirty (30) days before Contract end:
 - a) extend the contract Period only once (unless otherwise stipulated in the contract) by four months period (unless otherwise stipulated in the contract).
 - b) increase the ordered quantum of Services up to the percentage specified therein (or 25% if not specified) at any time, till the completion date of the contract, by giving reasonable notice and providing a reasonable extension in delivery period for increased quantum, even though the quantum ordered initially has been delivered in full before the completion Period.

20.2. Delays

1. Consultancy and Non-consultancy services may be delayed for a variety of reasons, including sometimes delays in discharge of its obligations by the Port. In case of delays attributable to the Service Provider, the Port may without prejudice to their other rights:
 - a) recover from the contractor liquidated damages as per para 20.6 below, or
 - b) treat the delay as a breach of contract as per para 20.6. below and avail all the remedies therein, although it is in Port's interest to resort to this provision only as a last resort, in case of inordinate delays.
2. The service provider should notify the Port and explain the causes of such delays. If corrective action requires extra work and the delay cannot be attributed to the service provider, the extra work should be reimbursed in accordance with the contract.
3. **Inordinate Delays:** Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays may be treated as breach of contract and shall be noted as deficient performance and be held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a deficient

performance. Such delays may be considered as a breach of the contract at the option of the Port.

20.3. Extension of Delivery

1. If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the Port shall examine the proposal and, on approval from the Competent Authority, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 20.5 below), for completion of the contractor's contractual obligations, provided:
 - a) That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
 - b) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided.
 - c) In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism.
 - d) However, in such cases it should be ensured that extensions are done with the denial clause.
2. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier).
 - a) No extension of the delivery date is to be granted suo motu unless the supplier specifically asks for it.
 - b) However, in a few cases, it may be necessary to grant an extension of the delivery period suo motu in the interest of the administration.
 - c) In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.
3. No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract.
 - a) When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is

without prejudice to the rights and remedies available to the purchaser under the terms of the contract.

- b) The last line of such a communication should therefore be: "This letter is issued without any prejudice to Port's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation."
4. When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions.
- a) It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually.
 - b) It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the purchaser under the terms and conditions of the contract" as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD.
 - c) To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing.
5. Port 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.

20.4. Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period, but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage.

- a) In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on, along identical lines as in para 20.3 above.
- b) The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above.

20.5. Denial Clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause

(over and above levy of LD) in the letter informing the supplier of extension of the delivery period.

- a) In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC, and foreign exchange rate.
- b) Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period.

20.6. Liquidated Damages

20.6.1. Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as Liquidated Damages (LD).

- a) Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [MallaBaux Vs. UOI (1970)].
- b) However, it would strengthen Port's rights, if it is established and kept on record, that inconvenience and loss has been caused due to the delay in supplies, though the loss cannot be exactly quantified, and hence liquidated damages are applicable as a genuine pre-estimate of the loss.

20.6.2 Quantum of LD

1. While granting extension of the delivery period, where the delivery of services or any activity thereof is accepted after expiry of the original delivery period, the Port may recover from the contractor, as liquidated damages for each week of delay or part thereof until actual delivery or performance, but not as a penalty, a sum equivalent to the 0.125% percent (or any other percentage if prescribed) of the related monthly bill of the Services.
 - a) Besides liquidated damages during such a delay, the denial clause shall also apply.
 - b) The Port may deduct liquidated damages from payments due to the service provider.
 - c) Payment of liquidated damages shall not affect the service provider's liabilities.
2. In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC.
 - a) LDs accrue only in case of delayed supplies.

- b) Where or as far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.
- 3. Government establishments/Departments, as distinct from PSUs, which execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them.

Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.
- 4. Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

20.6.3. Waiver of LD

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

20.6.4. Limit on total Damages

However, deduction on account of damages for delays and performance, put together shall be subject to a maximum of 10% (or any other percentage if prescribed) of the entire value of Contract of Services. The damages cannot exceed the amount stipulated in the contract [NC Sanyal Vs. Calcutta Stock Exchange (1971)].

20.7. Force Majeure

- 1. A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause).
 - a) An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract.
 - b) An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM.

- c) The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto.
 - d) There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action.
 - e) If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.
2. Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.
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Chapter-21

Cost Control: Billing and Payments

21.1. Payment to Service Providers

1. The invoice submitted by the supplier will be verified and signed by the contract manager and pay order form or any other relevant forms will be prepared by the Port and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by Port.
2. The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.
3. While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.
4. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.
5. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.
6. **Delay in payment to the Service Provider:** 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 Service Provider.
 - a) Where interest is to be paid, the rate of interest should be the rate of interest of SBI Lending Rate on the date on which the payment has become due.
 - b) In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers.
 - c) There should be a system to monitor delays in payments and to identify such unwarranted delays including an online system for monitoring of the bills submitted by Service Providers.
 - d) Such system shall have the facility for contractors/service providers to track the status of their bills.

- e) It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment.
- 7. Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure 18) may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.
- 8. Payment is made to the service provider based on a schedule agreed on in contract, often based on certain milestones or outputs.
 - a) The service provider submits an invoice to the Port detailing the expenditures for personnel and out-of-pocket items.
 - b) The Port then reviews the documentation and forwards it to Paying Authority for ultimate payment.
 - c) In normal practice, if any item needs further scrutiny before the Port can approve payment, payment of undisputed items will be made.
 - d) But payment of any disputed items will be withheld until the circumstances are clarified.
- 9. The terms and conditions of such payments are set out in the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the Consultancy firm.
 - a) The advance payment is set off by the Port in equal instalments against monthly billing statements until it has been fully set off.
 - b) Once an advance has been provided, requests for any additional advance are not considered until the service provider liquidates the previous advance.
 - c) The advance payment security is then released.
 - d) In some contracts there may be provision for mobilization fee to be paid.

21.2. Payment of Taxes and Duties

1. The contractor shall be entirely responsible for all taxes, duties, fees, levies etc., incurred until delivery of the Goods to the Port.
2. If applicable under relevant tax laws and rules, the Port shall deduct required taxes on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc from all payments due to the Contractor and deposit these to respective authorities as per the existing law in force during the currency of the

contract. In the case of foreign bidders, Corporate tax shall be deducted at source from each invoice as per instructions/orders of the Government of India, Indian Income Tax Authority. As per Government regulations/ directives/ Law Port may be required to deduct Tax Deducted at Source (TDS) or Tax Collected at Source (TCS).

3. Goods and Services Tax: GST shall be paid as per the rate at which it is liable to be assessed or has been assessed, provided the transaction of the sale is legally liable to such taxes and is payable as per the terms of the contract subject to the following conditions:

- a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery shall be shown being made in the name, location/ state, and GSTIN of the consignee only; the location of the procurement office of the Port has no bearing on the invoicing.
- b) The Port shall not pay a higher GST rate if leviable due to any misclassification of the HSN number or incorrect GST rate quoted mistakenly by the Contractor. Wherever the contractor invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per GST rate, which is lower of the GST rates incorporated in the contract or billed. However, the Port shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law. The Contractor shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.
- c) In case of undue profiteering by the contractor relating to GST tax, the Port shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.
- d) The contractor should issue Receipt vouchers immediately on receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per Contractual terms and GST Provisions.
- e) Liquidated damages or any other variations (Price Variation or Exchange Rate variation, etc.) should be shown as deductions on the invoice, and GST shall be applicable only on the nett balance payment due.
- f) While claiming reimbursement of duties, taxes etc. (like GST) from the Port, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities later, it (the contractor) shall refund to the Port, the Port's share

out of such refund received by the contractor. The Contractor shall also refund the appropriate amount to the Port immediately on receiving the same from the concerned authorities.

- g) All necessary adjustment vouchers such as Credit Notes/ Debit Notes for any short/ excess supplies or revision in prices or any other reason under the contract shall be submitted to the Port in compliance with GST provisions.

4. For Port eligible for availing Input Tax Credit:

- a) Contractors shall provide necessary documents/ compliances / invoices for enabling Port (for commercially run entities) to avail of Input tax credit benefits under GST legislation.
- b) The successful bidders should upload the details of the invoices raised on Port on the GST Network within the prescribed time limits and undertake to adhere to all other compliances under the GST regulations/ legislations.
- c) In case any credit, refund or other benefit is denied or delayed to the Port due to any non-compliance of GST legislation by the bidder, such as failure to upload the details of the supply on the GST portal, failure to pay GST to the Government or due to non-furnishing or furnishing of incorrect or incomplete documents/ information by the bidder, the bidder would reimburse the loss to the Port or it shall recover may recover the same, but not limited to, the tax loss, interest and penalty.

5. **Statutory Variation Clause:** Unless otherwise stated in the contract, statutory increase in applicable GST rate only during the original delivery period shall be to Port's account. Any increase in the rates of GST beyond the original completion date during the extended delivery period shall be borne by the contractor.

- a) The benefit of any reduction in GST rate must be passed on to the Port during the original and extended delivery period.
- b) However, GST rate amendments shall be considered for quoted HSN code only, against documentary evidence, provided such an increase of GST rates after the last date of bid submission.
- c) The Port is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

21.3. Concluding the Assignment and Post Contract review

1. The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditure incurred after the completion date are unlikely to be paid.
 - a) It is, therefore, important, under all types of assignments, for the service provider to request an extension of the completion date if it appears that additional items will need to be billed after the completion date.
 - b) The service provider should submit the final claim promptly after completing the assignment. The standard service provider contract states that the claim must be submitted within 60 (sixty) days of completion.
2. While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a “no claim certificate” may be taken from the contractor as per the format given in Annexure 18.
3. The contract shall stand closed upon
 - a) successful performance of all obligations by both parties, including completion of warranty obligations and final payment.
 - b) termination and settlements after that, if any, as per GCC-clauses.
4. At least in large contracts [above Rs. 50 (Rupees Fifty) lakhs], it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:
5. **Materials Reconciliation:** The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.
6. **Reconciliation with the User Department:** Besides material reconciliation, the user Department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the Department's satisfaction, as per the contract:
 - a) Achievement of performance standards of material/equipment supplied;
 - b) Support service during the warranty period which has ended on _____;
 - c) Training of operators/maintenance staff;
 - d) Vacation and restoration of site for use by the department

- e) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities, and assets loaned to contractor; and
 - f) Support during annual maintenance contract (if it was part of the contract) which has ended on _____.
7. **Payment Reconciliation:** The indenting/materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:
- a) LD;
 - b) Price reduction enforced on account of shortfall in performance of material/equipment;
 - c) Variations/deviations from the scope of the contract;
 - d) Overpayments/duplicate payments, if any;
 - e) Services availed from Port and vacation thereof such as accommodation, electricity, water, security, transport, cranes, and other machinery, and so on,
 - f) Demurrage, insurance premiums or claims, customs duties, and so on;
 - g) Material reconciliation;
 - h) Price and exchange rate variations;
 - i) Statutory duties paid on behalf of the contractor by Port; and
 - j) Inspection charges or loss of material in testing.
8. On satisfactory reconciliation and against a “no claim certificate” from the contractor, the bank guarantee may be released, and its acknowledgement taken from the contractor.
9. On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the Competent Authority. However, Port, at its discretion, may retain important records for future reference.

21.4. Payment against Time Barred Claims

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

payment against such time barred claim is made till a decision has been taken in this regard by the Competent Authority.

21.5. Monitoring of Consultancy Contracts – Risks and Mitigation

Risk-1

Substitution of key experts in implementation: When the contract progresses, over a period of time, the request for substitution of key staff is made by the firm citing reasons of non-availability, health, and so on.

Mitigation-1

The Port needs to deal with such requests strictly in terms of contract provisions which permit substitution of key experts in exceptional circumstances such as “death or medical incapacity”. Substitution of a person “of equivalent or better qualification and experience” should receive utmost scrutiny and compliance, as diluting such a provision leads to loss of quality of work and a serious integrity issue. Such substitution should not give any undue financial benefit to the contractor.

Risk-2

Cost overruns in time-based contracts: Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.

Mitigation-2

This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, Competent Authority should review justification for extension of the contract. One of the ways to prevent cost overruns in time-based contract is to require Ports acquire contract management capacity to manage consultants contract before contract is signed. It is Port’s mandate to monitor consultant’s contracts and also to request consultants to keep producing progress reports and highlighting the status of their contract as it reaches milestones such as 50% and 80% progress. Port must carefully authorise mobilisation and demobilisation of key experts, and examine the time sheets and other reimbursable expenditures.

Risk-3

Advance payments: This is an area of risk in public procurement with undue and unintended benefits to the contractor, which vitiates the original selection criteria.

Mitigation-3

Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly

stated in the NIT/tender documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.

Risk-4

Contract changes and renegotiations: This is also a risk area, where the Port may not get what it contracted and paid for or may pay for what it has not received. On the other hand, the contractor may not get timely or proper amendments due to changes asked by the procuring entities.

Mitigation-4

Contract modifications and renegotiations should not substantially alter the nature of the contract. It should not vitiate the basis of the selection of the contractor. It should not give undue or unintended benefits to the contractor. However, for any changes caused by the Port, the contractor should be adequately and timely compensated within the contractual terms.

Risk-5

- a) **Supervising** agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment, and characteristics go unnoticed.
- b) **Contractor's claims** are false or inaccurate and are protected by that in-charge of revising them.
- c) **Payment to the contractor** is delayed intentionally or otherwise.
- d) **Contractor gets final payment**, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.
- e) **Every dispute** lands up in arbitration or court cases since the Port is reluctant to grant compensation for its own lapses to the contractor.

Mitigation-5

A contract management manual or operating procedure should be prepared for large value contracts. There should be inbuilt systems of checks and balances.

All large contracts should be formally reconciled for closure to ensure that the scope of the work and warranty/defect liability period is completed. This should include the dispute resolution forum for resolving disputes in a fixed timeframe with provision of escalation level.

All payments/recoveries should also be reconciled. It should also be ensured that material/assets loaned to him including security passes are accounted for.

Chapter-22

Disputes and Conflicts

22.1. Disputes

1. Normally, there should not be any scope for dispute between the Port and Contractor after entering a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the contract, leading to a dispute between the Port and the Contractor. Therefore, the conditions governing the contract should contain suitable provisions for the settlement of such disputes or differences binding on both parties.
2. All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Procurement Officer and the Contractor within thirty (30) days from one party notifying the other of such matters, whether before or after the completion or termination of the contracts, shall be referred to as a "Dispute".
3. In its directives (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024) regarding contractual disputes, Department of Expenditure, Ministry of Finance has stressed that:

"Government departments/ entities/ agencies should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."
4. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims, citing relevant contractual clauses to the designated authority, and requesting to invoke the following dispute resolution mechanisms. The Dispute shall be attempted to be resolved, as far as feasible, before recourse to courts through dispute resolution mechanisms available in the contract, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

5. While processing a case for dispute resolution/ litigation/ arbitration, the Port is to take legal advice at appropriate stages.
 - a) Adjudication
 - b) Mediation (The conciliation part of the Arbitration and Conciliation Act, 1996 has been replaced by mediation by the recent Mediation Act, 2023).
 - c) Arbitration

22.2. Excepted Matters

Matters for which provision has been made in any clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitrable), and decisions of the Port, thereon, shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the Dispute Resolution Mechanism, including Arbitration. However, where the Port has raised the dispute, this sub-clause shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

1. Any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
2. Issues related to the pre-award tender process or conditions.
3. Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the contractor signs the contract.
4. Issues related to contractual action/ termination of contract etc., by the Port on account of fraud, corruption, debarment of contractors, criminal or wilful negligence of the contractor etc.
5. Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.
6. Provisions incorporated in the contract, which are beyond the purview of the Port or are in pursuance of policies of Government, including but not limited to
 - a) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of the Make in India policy of the Government.
 - b) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
 - c) Purchase preference policies regarding MSEs and Start-ups

22.3. Adjudication

1. After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Port, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in question or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procurement or any other authority mentioned in the contract (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication.
2. Where necessary, e.g. matters of high value, Port may proceed with adjudication by a high-level committee as para [22.4-3-(a), (b-i), (d) and (e)] below.
3. During his adjudication, the Adjudicator shall give the contractor an adequate opportunity to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any conciliation, arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.
4. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to invoke the process of Mediation as follows.

22.4. Mediation

1. Any party may invoke Mediation by submitting "Notice of Mediation" to the Head of the Procuring organisation. A neutral third party, known as the Mediator, facilitates the mediation process. If the other party is not agreeable to Mediation, the aggrieved party may invoke Arbitration, if available in the contract.
2. **The Mediation Act and a Mediation Agreement:** The Mediation shall be conducted as per The Mediation Act 2023. (The Act would be fully notified at a later date. Hence some of the provisions like registration of mediators, and MSPs/ MCI may get activated later).
3. **Guidelines for Mediation:** Department of Expenditure, Ministry of Finance has issued guideline on Mediation (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024). Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act 2023 and/ or negotiate amicable settlements to resolve disputes. Where necessary, e.g. matters of high value, they may proceed in the manner discussed below:
 - a) Government departments/ undertakings may, where they consider appropriate, e.g. in high-value matters, constitute a High-Level Committee (HLC) for dispute resolution, which may include the following (this composition is purely indicative and not prescriptive):
 - i) A retired judge.

- ii) A retired high-ranking officer and/ or technical expert.
- b) In cases where a HLC is constituted, the Government department entity/ agency may either
 - i) negotiate directly with the other party and place a tentative proposed solution before the HLC or
 - ii) conduct mediation through a mediator and then place the tentative mediated agreement before the HLC or
 - iii) use the HLC itself as the mediator.
- c) This will enable decisions taken for resolving disputes in appropriate matters to be scrutinized by a high-ranking body at arms-length from the regular decision-making structure, thereby promoting fair and sound decisions in the public interest, with probity.
- d) There may be rare situations in long-duration works contracts where a renegotiation of the terms may best serve public interest due to unforeseen major events. In such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee before approval by the competent authority.
- e) Approval of the appropriate authority will need to be obtained for the final accepted solution. Section 49 of the Mediation Act 2023 is also relevant in this regard.
- f) Mediation agreements need not be routinely or automatically included in procurement contracts/ tenders. The absence of a mediation agreement in the contract does not preclude pre-litigation mediation. Such a clause may be incorporated where it is consciously decided to do so.
- g) Disputes not covered in an arbitration clause and where the methods outlined above are unsuccessful should be adjudicated by the courts.

General or case-specific modification in the application of the above guidelines may be authorised by the Managing Director in respect of Central Public Sector Enterprises.

4. **Appointment of Mediator(s):**

- a) Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.
- b) Within 30 days of receipt of the "Notice of Mediation", the Head of the Procuring Organisation shall propose names of three likely mediators from

its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.

- c) If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.
 - d) As brought out in Annex-2 of Annexure 30, in contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).
 - e) After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.
5. **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at any other place.
6. **The Process:**
- a) The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.
 - b) Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Indian Evidence Act (This Act would be replaced by Bhartiya Sakshya Adhinyam (BS), 2023 from 1st July 2024), 1872 shall not be binding on the mediator. The parties can determine the mediation's venue, manner, and language.
 - c) **Confidentiality:** All the acknowledgements, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation; acceptance/ willingness to accept proposals in the mediation; documents prepared solely for the conduct of mediation are strictly confidential. These can neither be relied upon as evidence in any subsequent court proceedings nor be asked to be disclosed by any court/ tribunal. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.

- d) **Online Mediation:** The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.
- e) The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in identifying issues, advancing better understanding, clarifying priorities, exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.
- f) **Termination of Mediation:** The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is not completed within this timeline, the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties or the MSP. Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by a party(ies) in writing, addressed to the mediator and the other parties that they wish to opt out of mediation. On termination of Mediation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.
- g) **Mediated Settlement Agreement (MSA):** If the parties resolve the dispute and execute a mediated settlement agreement ("MSA"), then the Mediation is successful. An MSA is a written agreement settling some or all disputes and may extend beyond the disputes referred to mediation. It must be valid under the Indian Contract Act, signed by both parties and duly authenticated by the Mediator for the parties or the MSP. The Act provides options for MSA registration. During the pendency of proceedings, parties can also execute other agreements, settling some of the subject matter disputes.
- h) **Challenge to MSA:** MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.
- i) **Execution of MSA:** If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.

- j) **Costs:** The parties shall equally bear all costs of mediation, including the fees of the mediator and the charges of the mediation service provider.
- k) **No claim of Interest during Mediation proceedings:** Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.
- l) The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.

22.5. Arbitration

Please refer to Appendix-10 (Section-2) for further details of the Arbitration Act and procedure to be followed thereof. Also refer DOE OM No..F. 11212024-PPD dated 3rd June 2024 in this regard.

Chapter-23

Termination of Services

23.1. Terminating Services Prior to End of Contract

23.1.1. Breach of Contract

1. In case the contractor undergoes insolvency or receivership; neglects or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Port's rights and benefits under the contract, it shall be treated as a breach of Contract. Such defaults could include inter-alia:
 - a) Default in Performance and Obligations: if the contractor fails to deliver any or all the Goods or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain eligibility and Qualifications based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Port.
 - b) Insolvency: If the contractor being an individual or if a firm, any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
 - c) Liquidation: if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager
2. As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

23.1.2. Termination of Contract for Default

1. In the event of unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per para above, the Port, if so decided, shall by written 'Notice of Termination for Default' sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor. Before cancelling the contract and taking further action, it may be desirable to obtain legal advice. Such termination shall not:
 - a) prejudice or affect the rights and remedies, which have accrued and/ or shall accrue to the Port after that.
 - b) affect the performance of the contract to the extent not terminated, unless otherwise instructed by the Port,
 - c) extinguish warranty obligations of the contractor, for the goods already supplied, if any.
2. If the contract is terminated in whole or in part, additionally, recourse may be taken to any one or more of the following actions:
 - a) Temporarily withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.
 - b) Call back any loaned property or advances of payment, if any, with the levy of interest at the prevailing rate (MIBID - Mumbai Interbank Bid Rate).
 - c) Recover liquidated damages and invoke denial clause for delays.
 - d) Prefer claims against insurances, if any.
 - e) Encash and/ or Forfeit performance security or
 - f) Invoke any other contractual securities, including Termination of Contract for Default
 - g) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, not addressable by the above means.

23.1.3. Termination of Contract for Convenience of Port**Determination of Contract for Default/ Convenience of Port or for Frustration of Contract**

1. After placement of the contract, there may be an unforeseen situation compelling Port to terminate the contract, in whole or in part for its (the Port's) convenience, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall indicate inter-alia, that the termination is for the convenience of the Port or the frustration of the contract and also the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.

2. Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.
3. Unless otherwise instructed by the Port, the contractor shall continue to perform the contract to the extent not terminated.
4. All warranty obligations, if any, shall continue to survive despite the termination.
5. Determining the contract by Port for its convenience is not its legal right – and the contractor must be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.
6. The Goods and incidental Works/ Services that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Port as per the contract terms. For the remaining Goods and incidental Works/ Services, the Port may decide:
 - a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices; and/ or
 - b) To cancel the remaining portion of the Goods and incidental Works/ Services and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Goods and incidental Works/ Services.

23.1.4. Frustration of Contract

Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether because of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification.

- a) The parties shall use reasonable efforts to agree to amend the contract, as may be necessary to complete its performance.
- b) However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Port shall issue a 'Notice for Determining the contract' and terminate the contract as per para above, due to its frustration, without repercussions on either side.

23.1.5. Limitation of Liabilities

1. Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the contractor to the Port, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to

the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Port concerning IPR infringement.

2. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the assignment. This implies a missed opportunity and a waste of the funds already expended on the assignment. For these reasons, termination should be avoided if possible, even if this means a considerable re-staffing of the Consultancy team.
 3. Termination may be initiated by any party. Termination must be undertaken within the terms of the contract document. These provide for a notice period of 30 (thirty) days, the payment by the Port of any legitimate outstanding fees and costs to the consultant/ service provider, and the payment of legitimate costs to wind-up the Consultancy/ Non-consultancy service team (unless the termination was occasioned by the default of the consultant/ service provider).
 4. The CMC would indicate which of the final billings by the firm are eligible for payment and which are not. In case of dispute over what is or is not a legitimate expense, eligible for payment, the dispute mechanism described above is invoked and, if it is not possible to resolve the matter amicably, the issue is submitted for arbitration. The contract will remain valid until the arbitration decision is made.
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KAMARAJAR PORT LIMITED
NON-CONSULTANCY SERVICES
ANNEXURES

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Annexure-NCSM/1**1 Delegation of Financial Powers**

Delegation of Powers to various levels of officers in the Port needs to be done for indenting/requisitioning Non-Consultant services, calling for tenders, Entering into contract etc.

1. For Open Tenders
2. For Limited Tenders
3. For Single Tender including resultant single offer or Proprietary contracts
4. For Agreements or Contracts for technical collaboration and Consultancy Services

Notwithstanding anything as above, in cases where the award of contract or purchase/services or consultancy is inseparably linked with the project or scheme and forms a part of the proposals, the same will be processed as per the financial limits laid down for sanction of such schemes or projects by the Competent Authority.

Re-delegation of Powers: Under the Delegation of Financial Powers and the Schedules thereunder, certain powers have been given to Departments and to Heads of Department to decide the financial limits up to which they wish to further delegate powers for incurring certain types of expenditure. Such cases of re-delegation of powers may be either with a requirement to consult with Finance in individual cases while exercising the re-delegated power or without a requirement to consult the Finance in individual cases while exercising the re-delegated power. All orders of re-delegation of powers require consultation of the Finance on both these points, viz. the extent of re-delegation and whether or not consultation of the Finance in individual cases will be required.

Annexure-NCSM/2

2 Powers for Incurring Contingent Expenditure

Authority	Extent of power&&	
	Recurring	Non-recurring
Board	Full powers	Full powers
Chairman		
Managing Director		
Heads of Department/GM		
DGM		

&& Expenditure on indents, Contracts and Purchases is included under contingent expenditure (except where it is treated otherwise, e.g., stores relating to works).

Note: The powers delegated to the Departments are to be exercised by the issue of formal sanctions.

Annexure-NCSM/3

3 Suggested Structure of Schedule of Procurement Powers (SoPP)

(A suggested structure of SoPP is given below. However individual threshold values (wherever not given in GFR/ DoP) would depend on the respective circumstances of Port).

Description of item	Threshold value in Rupees Lakhs				
	Level - 1	Level- 2	Level 3	Level- 4	Level- 5
Competent Financial Authority > Level 1 is lowest and Level -n is the highest					
Procurement Proposal initiation, approvals and Signing: Including formulation of ToR/ Activity Schedules and Cost Estimates					
In Principle Approval, initiation, and approval of Procurement Proposals for Services					
Initiation, Approval of Terms of ToR/ Activity Schedules, and Cost estimates for Services					
Final Administrative, Budgetary Approval for Starting Procurement					
Approval for Floating of Tenders of Various Types including					
Approval Selection of System of Selection of consultants – other than LCS					
Approval for Selection by nomination of Services					
Preparation and Approval of Bidding Documents and floating of Tenders – EoI/ RfP for services					
Approval of Retendering of a discharged tender after second attempt					
Competent Authority (CA) for Evaluation and Acceptance of Tenders					
Procurement without calling Quotation					
Procurement Through a Purchase Committee					

Direct Approval of Tenders Without Tender committee					
Tender Committee/ CEC Composition and Competent Authority for Acceptance – EoI/ RfP for Services. Slabs below are suggestive but would depend on the frequency of cases in various slabs of procurements in the Port					
Slab-1 (Rs.10-25 Lakhs)					
Slab-2 (Rs.25-200 Lakhs)					
Slab-3 (Rs. 2- 10 cr)					
Slab-4					
Formulation and Placement of Contracts					
Contracts after following Tendering Process					
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA					
Acceptance of Advance Payments					
Other Variations demanded by Bidders in special circumstances.					
Post Contract Powers, including Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award					
Waiver of Liquidated Damages					
Allowing release of Time-barred claims					
Enlistment and Debarment of consultants/ service providers					
Initiation and Approval of Enlistment of service providers					
Initiation and Approval of Removal from Enlistment of service providers due to misdemeanours					
Initiation and Approval of Holiday Listing/ Suspension of service providers due to misdemeanours					
Initiation and Approval of Banning of service providers within the Port or recommendation to all Ports					

Annexure-NCSM/4

4 Format of Procurement Proposal

Procurement Proposal (Concept Paper) for Procurement of Non-Consultancy services

Number	Date
Category of Assignment	Non-Consultancy Services
Name of Officer/ Office proposing the Assignment	
Brief Description of Consultancy services Proposed	
Proposed Period of Engagement:	
Place and Nodal Officer for execution	
Total Estimated Cost:	
Estimate Name/ number:	

1. Purpose/ Objective Statement of Services

- a) Description of service:
- b) Background of the Port and the Project:
- c) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Port)

2. Service Outcome Statement - Outcomes expected from the Procurement of Services:

- a) Broad List of Activities/ Steps involved in achieving objectives:
- b) Expected Time-frame of assignment/ Duration of Engagement:
- c) Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)

3. Justification for the procurement of Services - Capabilities required for carrying out the assignments:**4. Rough assessment of available in-house capabilities as compared to required capabilities:****5. Precedence and similar assignments carried out earlier in the Port/ similar Ports****6. The eligibility and pre-qualification criteria to be met by the consultants/ service providers:****7. Justification: Based on assessment of required and in-house capabilities;**

- a) In case of Non-Consultancy Services: It is certified that, the procurement (outsourcing) of these services is justified for following reasons (Tick points applicable). Please also add a narrative justification:
 - i) It is Port's policy to outsource specific (class) of services; or
 - ii) Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/usage of;
 - 1) Staff/ Management/ Organization;
 - 2) Technological and Material Resources;

- 3) Money, and
- 4) Time/ Speed of execution; and

8. **In principle approval**

In principle approval may kindly be accorded, for further processing. Final administrative and budgetary approvals would be taken after development of Terms of Reference/ services and Activity Schedule and detailed estimates.

Proposing Officer

Signatures/ Name/ Designation/ Department

Comments and Instructions:

Approving Officer

Signatures/ Name/ Designation/ Department

Annexure-NCSM/5

5 Services and Activities Schedule for NCS

1. **Title of the Services**
2. **Background** of Port and Services and impact on Port's performance/ objectives;
3. **Statement of Purpose and Service Outcomes**
4. **Contract Period:** [Unless otherwise stipulated, the period for which Service shall be Contracted shall be one year from the date of Contract, with a provision for extension for four months (unless otherwise stipulated) after that.]
5. **Description and Scope of Services**
6. **Form of BOQ/ Contract** – [Time-based (input/ output admeasurement) or Indefinite delivery (input/ output admeasurement) or Lumpsum or Percentage-Based]
7. **Itemized Services and Activities Schedule**
 - a) Tasks, Activities, dependencies, categorised into classes, location and features affecting prices.
 - a) Frequency of Activities, Quantum, Length and Duration of Activities
 - b) Performance standards for such activities
8. **Labour/ Personnel Deployment Schedule:**
 - a) Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment
 - b) Project Managers, Supervisors, Their qualifications/ experience, numbers
 - c) Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel
9. **Material Schedule, if any:** Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/ Manpower/ day/ location etc
10. **Essential Equipment Schedule:** Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery) – mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.
11. **Deliverables/ Outcomes and Timelines** (frequency) thereof:
12. **Statutory and contractual obligations** to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance,

Employment reservations and Port's own regulation about safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.

13. **Facilities and Utilities to be provided by the Port to service provider at Site:** It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.
14. **Insurances:** Required to be taken by the contractor
15. **Institutional and organisational arrangement**
 - a) Counterpart Project Manager and Team
 - b) Chain of Command for reporting
 - c) Procedure for review of the work of service provider after award of contract

Annexure-NCSM/6

6 Bid Opening Attendance Sheet cum Report

KAMARAJAR PORT LIMITED

Bid Opening Attendance Sheet

Tender No. KPL/___/___/20___ date _____ Date of opening _____

Title of Tender: _____

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

Signature of the Authorized representative of the Port

Bid Opening Report

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)	Submission of Requisite EMD (Y/ N)	Submission of other Mandatory Documents (a list can be prepared before hand to act as check list) (Y/ N)	No. of Cuttings/ Over-writings	Rate Quoted and Taxes/ Duties (in case of single bid or Financial bid)	Other special features announced
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-NCSM/7**7 TEC Committee Minutes/Report Format**

(For Eol/ Techno-Commercial/Financial Bids)

KAMARAJAR PORT LIMITED

Tender No. _____ Title _____

Tender Published in _____ Date of publication / Extension (if any) _____

Estimated cost _____ Bid Validity _____

Tender Opening date _____ Total Number of tenders received _____

Method of selection: LCS/QCBS/SSS

Type of Contract: Lumpsum/Time Based/Percentage/Retainer cum Success fee/Indefinite delivery

Past Precedents/Procurements

S.No	Service Provider	Order Ref.No & Date	Description of Service	Cost details	Remarks

Members of the Tender Evaluation Committee:

1. Name and Designation _____
2. Name and Designation _____
3. Name and Designation _____
4. Name and Designation _____

I. Background of the Assignment

- a) Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.
- b) Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)

- c) Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist, EoI, and. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it available for review/approving authority), extension of proposal submission date, and so on).
- d) Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage – EoI/ Technical Evaluation:
 - i) Participated/ Expressed Interest:
 - ii) Shortlisted in EoI/ Technical Evaluation prior to this

II. Preliminary Evaluation of Responsiveness

- a) Review handling of any complaints received
- b) Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications`

III. Evaluation of Responsive Bids: Technical Evaluation

- a) Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of sub-criteria and associated weightings as indicated in the Tender document and compliance of evaluation with Tender Document.
- b) Summary of Evaluation Criteria and Weights assigned
- c) Grading and Rating Scheme in the Bid documents or decided before the Evaluation.
- d) Present results of the technical evaluation: scores and the award recommendation (based on Rating System agreed among evaluators prior to receipt of proposals).
- e) Highlight strengths and weaknesses of each proposal (most important part of the report).
 - i) Strengths: Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments.

- ii) Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest).
- f) Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations.
- g) **Technical Evaluation Report should also contain**
 - i) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in Tender Document)
 - ii) Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified)
 - iii) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified)
 - iv) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)

IV. Evaluation of Technically Successful Bids: Financial Evaluation

- a) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by Competent Authority.
- b) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the Tender Document and compliance of evaluation with Tender Document.
- c) Insert a summary table of evaluated financial scores/ combined weighted scores
- d) Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based (Quality-based), Selection-based on Qualifications (Qualifications), and Single source Selection (Single-Source)); arithmetical correction in case of Time-based Contract, tax-related problems; award recommendation; and any other important information.
- e) Attach Minutes of Public Opening of Financial Proposals

V. Summary of Recommendations

Bid-wise recommendation should be recorded : In case of evaluation of financial bids,

- a) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;
- b) Also mention that the rates recommended are considered reasonable (and basis for such determination);
- c) Total value of the recommendations for determining level of acceptance authority;
- d) Mention that none of the TC members have any conflict of interest with the parties recommended for award;
- e) Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.

Signature Name and Designation of the Members

	Member-1	Member-2	Member-3	Member-4
Name				
Designation				
Date				

Remarks by the Accepting Authority:

Signature

Name & Designation of Accepting Authority

Date of Acceptance:

Annexure-NCSM/8

8 Certificate for Procurement of NCS without Quotation

Ref No. _____ Details of Procurement _____
 Place _____ Date _____

"I, _____ (Name/designation), am personally satisfied that the Non-consultancy services executed as described below are of the requisite scope and performance standards and have been got executed from a reliable service provider at a reasonable price."

Description of Service:	
<u>Justification:</u>	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
Service provider	M/s
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring Officer:	
Designation:	
Signature:	

Annexure-NCSM/9

9 Purchase Committee Certificate for Procurement of NCS

Ref No. _____ Details of Procurement _____
 Place _____ Date _____

Description of Service:						
Justification:						
Place and Nodal Officer for availing the Services						
Contract Basis		Lump-Sum/ Unit (Item) Rate/ Time-based				
Scope/ Quantum/ Performance Standards						
Details of Prices Ascertained						
Service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments
Selected service provider						
Unit Rate, Taxes/ Duties/ Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:		Signature:		Signature:		
Name 1:		Name 2:		Name 3:		
Designation:		Designation:		Designation:		

"Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the above-described Services are executed at a reasonable price and are of the requisite scope and performance standards and have been got executed from a reliable service provider, and it is not debarred by KPL". The details of recommended purchase are:

Annexure-NCSM/10**10 Limited Tender Form**

(For Techno-Commercial/Financial Bids)

Kamarajar Port Limited

To

M/s _____

Sub : _____ (Tender Description)

Ref : Tender Enquiry No. _____ Date _____ Date of tender opening _____ Time _____ (am./ pm)

Dear sir,

With reference to above subject, please submit on or before 3:00 pm on the date of tender opening, your quotation for the following goods/services, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening.

Yours Sincerely

Procuring officer

Services and Activities Schedule: All Rates in Figures and in Words in Rupees								
Sr No	Description of Services/ Activities	Qty	Unit	Delivery Terms	Rate per Unit	Taxes & Duties	Total Rate per Unit	Total Value
Delivery Schedule:								
Enclosed Performance Standards /Special Conditions of Contract:								

I/ we engage to delivery of Service(s) to your office and comply the following:

1. Services and Activities schedule and Performance indicated.
2. Special conditions of Contract for this tender.
3. Terms and conditions printed overleaf.
4. General conditions of contract (signed at the time of supplier registration).
5. I/we confirm that set off for the GST, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under GST, etc.
6. This offer is valid for 90 (ninety) days from the date of opening of the tender.
7. That we have not been debarred by any Government/Undertaking.
8. That the rates quoted are not higher than the rates quoted for same item to any Government/Undertaking.
9. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.

Signature & Seal Place & Date:	Name of Authorised Signatory:	
Address:	Tel. No./Mobile No. Email Id:	

TERMS AND CONDITIONS OF LIMITED TENDER

1. The quotation must be in the form furnished by the Port and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not, the quotation will not be considered. Quotation written in pencil will not be considered.
2. Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the bidders or their representatives who may wish to be present.
3. The Port reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.
4. Participation in this tender is by invitation only and is limited to the selected Port's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of Port and apply for registration as per procedure. Note: to get registered as an approved supplier with the Port, please download supplier approval form from _____ and submit.
5. Manufacturer's name and country of origin of services offered must be clearly specified. Please quote whether your organisation is large scale industry or small-scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your

registration details. Purchase Preference and restriction policies of the Government of India shall be applicable in this Tender.

6. Complete details and performance standards if any must accompany the quotation. If you have got any counter offer as suitable to the Services required by us, the same may be shown separately.
7. All Services delivered are subject to inspection and approval before acceptance.
8. The Port reserves the right to modify the quantity specified in this enquiry.
9. The prices quoted should be firm till the services are completed. Please quote the rates in words and figures. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.
10. Payment of GST is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding GST is recorded in the quotation, the GST will be considered as included.
11. Delivery period required for delivering the services should be invariably specified in the quotation.
12. In case your quotation is accepted, and order is placed on you, the services against the order should be completed within the period stipulated in the order. The Port reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to perform Services within the stipulated period shall entitle Port for the imposition of penalty without assigning any reasons @ 1/2% (half percent) of the total value of the services covered in order as penalty per day subject to a maximum of 5% (five percent) unless extension is obtained in writing from the office on valid ground before expiry of delivery period.
13. If the deliveries are not maintained and due to that account Port is forced to obtain services at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting supplier.
14. Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.
15. Our normal payment terms are 100% (hundred percent) within 30 (thirty) days on receipt and acceptance of services at our site.

Annexure-NCSM/11

11 Example of Formula for Price Variation Clause

(The formula for price variation should ordinarily include a fixed element, a material element and a labour element. The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). That portion of the price represented by the fixed element and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation.)

The formula for price variation will thus be:-

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

Where: -

Pa is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

Po 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)

Lo and L1 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 1, 2024 (base date), Lo would be average wage index for the quarter of Oct-Dec 2023.

Mo and M1 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 1, 2024 (base date), Mo would be prices/index as average of the month of January 2024. 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 Mx, My, Mz.

The following conditions would be applicable to price adjustment:

- 1) There is a Time-lag period between the date of supply/ base date respectively and the dates on which indices/ prices are to be considered as per above formula. This time lag can be a few months/ weeks prior to such base date/ date of supply, depending on the frequency of publishing/ availability of indices/ prices and the supply chain process of manufacturing. This must be specified in the definitions of L0/ L1 and M0/M1 indices in the formula in the tender document as above.
- 2) Base date shall be assumed to be the date of last deadline of submission of bids.
- 3) No price increase is allowed beyond original delivery period.
- 4) No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- 5) No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.
- 6) Total adjustment will be subject to maximum ceiling of ____% (to be specified in tender document), beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of contract.
- 7) Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- 8) In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M1}{M0}\right)$ and $\left(\frac{L1}{L0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E0}{E1}\right)$, where E0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E0 is Number of Rs. in a \$ on base date and E1 is the exchange rate on determination date.
- 9) Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

"It is certified that there has been no decrease in the price because of decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify this to the purchaser, and we undertake to refund and agree to the purchaser deducting any excess payment made to us in this regard, from our future payment due."

Annexure-NCSM/12

12 **Model Clause/ Certificate to be inserted in tenders**

Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

(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.)

- 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 fulfils all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model 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 fulfils all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure-NCSM/13**13 Integrity Pact Format****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:-

1. Commitments of the PRINCIPAL/EMPLOYER

- a) 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.
- b) 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.
- c) 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.
- d) 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.

2. 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.

3. Previous Transgression

- a) 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.
- b) 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.

4. 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:-

- a) 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.
- b) 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.
- c) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER / CONTRACTOR.
- d) 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.
- e) 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.
- f) 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.

- g) 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.
- h) 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.
- i) 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.
- j) 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.
- k) 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.
- l) 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.
- m) 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.
- n) 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.

5. 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.

6. Independent Monitors

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

- | 1. Name & Particulars | 2. Name & Particulars |
|--|-----------------------|
| <p>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.</p> | |
| <p>b) The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.</p> | |
| <p>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.</p> | |
| <p>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.</p> | |
| <p>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.</p> | |
| <p>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</p> | |

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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

- a) 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.
- b) 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.

12. 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:

Place:

Date:

Date:

Annex-1 to Integrity Pact - Guidelines for Indian Agents of Foreign Suppliers

- 1.1 There shall be compulsory registration of agents for all Global Tender Enquiries (GTE) and Limited Tender Enquiries (LTE). An agent not registered with the Port shall apply for registration with them.
- 1.2 Registered agents shall file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the Principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/retainer ship being paid by the Principal to the agent before the placement of an order by the Port.
- 1.3 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties, have stated that they are not paying any commission to the Indian agents, and the Indian representative is working based on salary or as a retainer, a written declaration to this effect should be submitted by the party (i.e., Principal) before finalising the Contract.

2.0 Disclosure of Particulars of Agents/ Representatives in India, if any.

- 2.1. Bidders of Foreign nationality shall furnish the following details in their offer:
 - 2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorisation and authority given to commit the Principals. If the agent/representative is a foreign Company, it shall be confirmed whether it is a real functioning Company, and details of the same shall be furnished.
 - 2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.
 - 2.1.3 Confirmation of the Bidder that the commission/ remuneration, if any, payable to his agents/representatives in India, may be paid by the Port in Indian Rupees only.
- 2.2. Bidders of Indian Nationality shall furnish the following details in their offers:
 - 2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorising the agent to make an offer in India in response to tender either directly or through the agents/representatives.
 - 2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Bidder for himself.

- 2.2.3 Confirmation of the foreign principals of the Bidder that the commission/remuneration, if any, reserved for the Bidder in the quoted price (s) may be paid by the Port in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.
- 2.3. In either case, in the event of the contract materialising, the payment terms shall provide for payment of the commission /remuneration, if any, payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.
- 2.4. Failure to furnish correct and detailed information as called for in paragraph - 2.0 above shall render the concerned bid liable to rejection or, in the event of a contract materialising, the same liable to termination by the Port. Besides this, there would be a penalty of banning business dealings with the Port or damage or payment of a named sum.

Annex-2 to Integrity Pact – Appointment and Role of IEMs

1. Appointment of IEMs

- i) Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs) nominated by CVC at an organisation's request from its list of empanelled IEMs. Three IEMs shall be appointed for Maharatna and Navratna PSUs, and two IEMs shall be nominated in all other organisations.
- ii) The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons shall be published on the CVC's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate, the name(s) would be included in the panel for nomination as IEM.
- iii) The zone of consideration of eminent persons for empanelment as IEMs would consist of:
 - a) Officers who have held the post of Additional Secretary to Govt of India or were in the equivalent or higher pay scale at the time of retirement (whether serving with Govt of India or any State Govt.).
 - b) Persons who held the CMD post of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt of India at retirement.
 - c) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies, and other Financial Institutions at retirement.

- d) Chief Executive Officer of an organisation (other than listed above and were equivalent or higher to Additional Secretary to Govt, of India, at the time of retirement).
- e) Armed Forces Officers in the pay scale equivalent or higher to Additional Secretaries to Govt of India at retirement.
- f) The age of IEM should not be more than 70 years at the time of appointment.
- g) If a retired person has accepted a full-time assignment, post-retirement, either in the government sector, private sector, or elsewhere, he shall not be eligible to be on the panel of IEMs. All those empanelled persons who accept full-time assignments elsewhere would cease to remain on the panel from the date they have taken the assignment. In this regard, it would be incumbent upon the empanelled persons to immediately inform CVC about the acceptance of full-time assignment by them.
- h) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed.
- i) A person acting as an IEM shall not be debarred from taking up other assignments, such as consultancy with other organisations or agencies, subject to his declaring that their additional assignment does not involve any conflict of interest and is not a full-time assignment. The IEMs must also sign a declaration of absence of conflict of interest with existing assignments. In case of any conflict of interest arising later from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse themselves from that case.
- j) A person may be appointed as an IEM in a maximum of three organisations at a time. An empanelled person cannot be appointed in one organisation for over three years.

2. Role of IEMs in Integrity Pact

- i) Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of fair play in modes of procurement and tendering systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.
- ii) The entire panel of IEMs should examine the matter jointly, who would investigate the records, conduct an examination, and submit their joint recommendations to the Management of the Port. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided

access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.

- iii) The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the Integrity Pact.
- iv) IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the complaints in any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

3. Systemic Improvements:

- i) The Procurement wing of the organisation shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, covered under the Integrity Pact, shall be shared with the IEMs during the quarterly meeting. Such a summary of contracts should include details like tender number, mode of tendering, the period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.
- ii) The above summary of contracts is to help the IEMs in analysing whether an appropriate mode of tendering is being adopted by the organisation, i.e., limited tender mode or nomination mode is not unduly used, the number of bidders is not too low, a large number of bidders are not excluded while judging the eligibility or during the technical bid evaluation stage, and whether particular firm or set of specific firms is repeatedly getting contracts etc. Based on their analysis, the IEMs can suggest to the management suitable systemic improvement(s) and measures to improve objectivity in decision-making, capacity building, etc.
- iii) It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organization on a half-yearly basis to discuss and review the information on tenders awarded during the preceding six-month period. Additional such meetings, however, can be held as per requirement. All such meetings with the Procurement wing or with the organisation's Chief Executive should be minuted.

4. Dispute Mediation:

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both

parties shall equally share the fees/expenses on dispute resolution. If the dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

5. Entitlements of IEMs

- i) IEMs shall be paid fees of ₹ 25,000/- per sitting subject to a maximum of ₹ 3,00,000/- in a calendar year for the sitting fees.
 - ii) The travel and stay arrangements for the IEMs for such meetings shall equal their entitlements at retirement. Booking travel tickets, as per the mode of travel indicated by the IEM in writing (including email), the organisation shall do local transport and stay. The organisation concerned shall provide a place for meetings and secretarial assistance to IEMs for rendering their job. No payment instead of secretarial aid shall be paid to the IEMs.
 - iii) As mentioned above, the travel/ stay arrangements and fees for meetings held by IEMs for mediation between the management and the contractor shall be the same but in addition to the fees for the regular meetings and would be over and above the ceiling of 3,00,000/- as per calendar year.
-

Annexure-NCSM/14**14 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-NCSM/15

15 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-NCSM/16

16 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 -----

1. On further discussions with your representatives onin 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-NCSM/17

17 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 performance of Services-----, 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-NCSM/18

18 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 performance of Services 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,

Date _____

Place _____

Signatures of contractor or
Officer authorized to sign the contract documents
on behalf of the contractor
(Company seal)

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SECTION-2
APPENDICES
NON CONSULTANCY SERVICES MANUAL

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Appendix-NCSM-S2/A1**1 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

1. 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.

2. 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.

3. 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 (23rd 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 qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are 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 (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

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. 23rd 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 23rd 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 23rd 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 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 - ii) Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective 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.

Appendix-NCSM-S2/A2

2 Preference to Make in India

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

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 for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. 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 2-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 2-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.
 - iii) In the procurements of goods or works, which are covered by para 2-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:

- iv) 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.
 - v) 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.
 - vi) 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.
 - vii) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.
- c) **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:
- i) 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'.
 - ii) 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.
 - iii) 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.
 - iv) 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.

- v) Only those 'Class-I local supplier' would be eligible for purchase preference 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. First purchase preference must be given to the lowest quoting eligible 'Class-I local supplier'. If the lowest quoting 'Class-I local supplier,' does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher eligible 'Class-I local supplier,' and so on. In case quantity thus allocated to eligible 'Class-I local suppliers' is short of 50% of the tendered quantity, then this shortfall quantity may be distributed among all other qualified bidders as per award criteria stipulated in the tender documents.
- vi) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

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

5. **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.

6. **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.

7. **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.

8. 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.
- a) 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.
- b) 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.
- c) 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.
- d) Nodal Ministries and procuring entities may prescribe fees for such complaints.
- e) 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.

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

9. 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.
- a) 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.
- b) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (a) and (b) above.
- c) 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.

10. Reciprocity Clause

- a) 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.***
- a) ***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.
- b) The stipulation in (b) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
- c) State Governments should be encouraged to incorporate similar provisions in their respective tenders.
- d) The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.

11. Action for non-compliance of the Provisions of the Order

- a) 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.

- b) "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."

5. **Assessment of supply base by Nodal Ministries:**

- a) "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."
- b) 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.
- c) **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.

6. **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.

7. Powers to grant exemption and to reduce minimum local content:

- a) The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
 - i) reduce the minimum local content below the prescribed level; or
 - ii) reduce the margin of purchase preference below 20 (twenty) percent; or
 - iii) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.
- b) 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.

8. 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.

9. Standing Committee.

- a) A standing committee is hereby constituted with the following membership:
 - i) Secretary, Department for Promotion of Industry and Internal Trade-Chairman
 - ii) Secretary, Commerce-Member
 - iii) Secretary, Ministry of Electronics and Information Technology-Member
 - iv) Joint Secretary (Public Procurement), Department of Expenditure-Member
 - v) Joint Secretary (DPIIT)-Member-Convenor
- b) The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

10. **Functions of the Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee

- a) shall oversee the implementation of this order and issues arising therefrom and make recommendations to Nodal Ministries and procuring entities.
- b) shall annually assess and periodically monitor compliance with this Order.
- c) shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content.
- d) may require furnishing of details or returns regarding compliance with this Order and related matters.
- e) may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures.
- f) may examine cases covered by paragraph (xiii) above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization.
- g) may consider any other issue relating to this Order which may arise.

11. **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.

12. **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

13. **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.

Appendix-NCSM-S2/A3

3 Restrictions on Entities from a Class of Countries

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

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

“Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/ or screening, on procurement from bidders from, or bidders having commercial arrangements with an entity from, a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.”

2. Detailed provisions in this regard have been notified by the Department of Expenditure's OM No. F.7/10/2021-PPD (1) dated 23.02.2023, are as follows.
 - a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The information on Competent Authority is given in sub-para 10 below.
 - b) Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in para 10 below.
 - c) The requirement of registration for cases covered by para (a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by para (b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.

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

3. Applicability

Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable.

- a) to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions;
- c) to all Central Public Sector Enterprises;
- d) to all procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings; and
- e) Union Territories, National Capital Territory of Delhi, and all agencies/ undertakings thereof.
- f) The Order is not applicable:
 - i) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
 - ii) On procurements made by Indian missions and by offices of government agencies/ undertakings located outside India.
 - iii) On bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs (<https://mea.gov.in/Lines-of-Credit-for-Development-Projects.htm>).
 - iv) On 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.

4. Definitions

- a) "Bidder" for the purpose of the Order (including the term 'bidder', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)
- d) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in sub-para 4 below, occurring on or after 23.07.2020.
- e) "Bidder (or entity) from a country which shares a land border with India" for the purpose of the Order means:
 - i. An entity incorporated, established, or registered in such a country; or
 - ii. A subsidiary of an entity incorporated, established, or registered in such a country; or
 - iii. An entity substantially controlled through entities incorporated, established, or registered in such a country; or
 - iv. An entity whose beneficial owner is situated in such a country; or
 - v. An Indian (or other) agent of such an entity; or
 - vi. A natural person who is a citizen of such a country; or
 - vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- f) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Note

- i) A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.
- ii) However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.
- g) Beneficial owner for the purposes of point e(iv) will be as under:
 - i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.

Explanation: -

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

- v) Where no natural person is identified under (4) (a) or (4) (b) or (4) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- vi) 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.
- vii) For determining nationality while assessing the beneficial ownership of the bidder, the nationality as mentioned in the Passport of the beneficiary owner should be considered. In case of the possibility of dual citizenship, nationality on all the passports should be considered, through a suitable declaration. If, nationality in any of the passports of the person, whose beneficial ownership is being assessed, is recorded to be from a country sharing land border with India, the provisions contained under this Order shall apply.

5. Sensitive Sectors/ Technologies (relevant only for the provisions on ToT arrangements):

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

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

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

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

S. No	Sectors
1	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
2	Banking and Finance including Insurance
3	Civil Aviation
4	Construction of ports and dams & river valley projects

5	Electronics and Microelectronics
6	Meteorology and Ocean Observation
7	Mining and extraction (including deep sea projects)
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

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

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

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

6. Sub-contracting in works contracts

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

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

7. Model Clauses/ Certificate regarding compliance

An undertaking shall be taken from bidders that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such certificate given by a bidder whose bid accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-12. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc.

8. Validity of registration

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

9. Government e-Marketplace

GeM shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

10. Competent Authority and Procedure for Registration

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT) [(i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para 10 (d) above shall remain and no registration shall be granted without such clearance. (ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc]. [Notified vide OM No. F.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020]
- b) The Registration Committee shall have the following members:
- i) An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairperson;
 - ii) Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii) Any other officer whose presence is deemed necessary by the Chairperson of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as covered by the Order.
- d) On receipt of an application seeking registration from a bidder covered by sub-para 2-a) and 2-b) above, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. registration shall not be given unless political and security clearance have both been received.
- e) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such application by them.
- f) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in sub-para 3 above, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

11. Special Cases [In reference to para 2-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.

12. Clarifications regarding the applicability of the restrictions under Rule 144 (xi) of the GFRs.

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

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

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

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

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

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

S. No	Scenario	Applicability of Rule 144 (xi)
a)	The equipment/ goods have been purchased or will be purchased from company (manufacturer) from	<i>The bidder has procured certain goods to offer the requisite services to a procuring entity. In such case, the bidder does not fall within the</i>

	country which shares a land border with India	<i>definition of the terms “bidder” as defined under sub-para 4-e) above. Hence, the provisions of the Rule 144 (xi) of GFR, 2017 do not apply to this case.</i>
b)	By entering into a MOU/ lease agreement with the company (who owns the equipment/ goods) from country which shares a land border with India	<i>Here, the bidding vendor proposes to hire the services from a company that belongs to a country sharing land border with India. This, prima facie, becomes the case of indirect supply of services by a company that owns the equipment/ goods by introducing an intermediary. The intermediary merely acts as an agent to the company providing services of the equipment. In such a case registration of company owning the equipment and indirectly supplying the services shall require to be registered with the competent authority, thereby requiring the need to fulfil the provisions of Rule 144 (xi).</i>
c)	By entering into a MOU/ lease agreement with the company (say ‘X’ who is the present owner of the equipment) from country which does not share a land border with India. The equipment has been purchased from the manufacturer of the company (say ‘Y’) which is from country that shares a land border with India.	<i>In this case, the actual supplier of services, prima facie, shall be ‘X.’ Status of ‘X’ in this case does not attract the provisions of Rule 144 (xi).</i>

g) Illustrative examples on the applicability of the Restrictions under Rule 144 (xi) of GFR 2017

- i) A vendor say, ‘Party A’ from India, is procuring an item from their sister company say, ‘Party B,’ which is registered in a country not sharing land border with India. Both the parties, Party A and B are owned by an entity say, ‘Party C.’ Party C does not belong to a country sharing land border with India. However, Party B has its production facility in a Country sharing land border

with India, and the manufactured item will be procured by Party A from its sister concern i.e., Party B from the above-mentioned production facility. The production unit is wholly owned by Party B. The Party A now claims that the provisions of Rule 144 (xi) of GFR 2017 do not apply on it because both the Party A and B are not:

- 1) An entity incorporated, established, or registered in such a country, as Party A is registered in India and Party B is registered in a Country not sharing land border with India;
- 2) A subsidiary of an entity incorporated, established, or registered in such a country as they are 100% owned subsidiary of Party C, which is incorporated, registered, and established in a country not sharing land border with India;
- 3) An entity controlled through entities incorporated, established, or registered in such a country as they are 100% owned by Party C which is registered and established in a country not sharing land border with India;
- 4) An entity whose beneficial owner is situated in such a country as their beneficial owner is Party C;
- 5) An Indian (or other) agent of such an entity;
- 6) A natural person who is a citizen of such a country;
- 7) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above. Though it has a wholly owned subsidiary in a country which shares land border with India but not a JV or consortium (subsidiary does not qualify as JV or consortium)
- 8) In addition to above, Party A claims that they are not procuring finished goods directly/ indirectly from the vendors from the countries sharing land border with India as the item is being manufactured in their own production units.

With the above facts put into light and the claims put forth by Party A, it is to bring to the clarity to the procurers, that Party A requires to get itself registered with the competent authority as per the provisions of Rule 144 (xi) of GFR 2017, since the procured item is a finished product, that is being procured by

Party A from its sister organization Party B from the manufacturing unit situated in the country sharing land border with India.

ii) Taking an example of IT goods and services:

1. if the contractor is only supplying the servers as it is from an OEM, that belongs to a country sharing land border with India, and there is no value addition done by the contractor, then the contractor acts as an agent for the OEM and registration of the OEM and the agent (contractor) both are required as per the provisions of Rule 144 (xi) of GFR 2017.
2. In case the contractor supplies value added services on a hardware, the contractor outsources, in that case the registration of OEM is not required.
3. Where there is deployment of IT services that includes both hardware and software customization, and the contractor has sourced hardware, which is made in the country sharing land border with India, the requirement of registration as per the provisions of Rule 144 (xi) are not applicable.

Appendix-NCSM-S2/A4

4 Code of Integrity for Public Procurement (CIPP)

Code of Integrity for Public Procurement (CIPP)

1. Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Port and the bidders/ suppliers/ contractors/ service providers involved in procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on. (Rule 175 of GFR 2017)

- a) **Code of Integrity for Public Procurement:** Procuring authorities as well as bidders, suppliers, contractors, and service providers should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:
- b) **“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;
- c) **“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;
- d) **“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 Port, that may impair the transparency, fairness, and the

progress of the procurement process or to establish bid prices at artificial, non-competitive levels;

- e) **“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;
- f) **“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 Port 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 Port with an intent to gain unfair advantage in the procurement process or for personal gain; and
- g) **“Obstructive practice”**: materially impede the Port’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 Port’s rights of audit or access to information;

2. Obligations for Proactive Disclosures

- a) Port authorities as well as bidders, suppliers, contractors, and service providers, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b) All bidder must be asked in the Tender document to declare any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;
- c) The Contractor/Service Provider must disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of the Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount

and currency, and the purpose of the commission or fee in a format given in the Tender Document.

- d) 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 Port. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

3. Conflict of Interest

All bidders shall have to abide by the Code of Integrity in Public Procurement detailed in the Tender Document. A bidder shall not have conflict of interest which can lead to anti-competitive practices to the detriment of Port's interests. All bidders found to have a conflict of interest shall be disqualified. .

- a) **Conflicting Bidding:** A bidder may be considered to have a conflict of interest with one or more parties in this tender process, if:
 - i) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - ii) receives or have received any direct or indirect subsidy/ financial stake from another bidder; or
 - iii) has the same legal representative/ agent as another bidder for purposes of this bid.
 - iv) A Principal can authorize only one agent, and an agent also should not represent or quote on behalf of more than one Principal; or
 - v) has a relationship with another bidder, directly or through common third parties, which puts it in a position to have access to information about or influence the bid of another Bidder or influence the decisions of the Port regarding this Tender process; or
 - vi) participates in more than one bid in this tender process.. Participation in any capacity by a Bidder (including the participation of a Bidder as sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of his bid as the main/ principal/ lead bidder. However, this does not limit the participation of a non-bidder firm as a sub-contractor in more than one bid; or
 - vii) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business

ownership/management, only one unit should quote. Similar restrictions would apply to closely related allied firms. Bidders must proactively declare such allied/ common business/ management units in same/ similar line of business.

- b) **Conflicting Activities:** would be providing goods, works, or non-consulting services resulting from or directly related to consulting services that it provided (or were provided by any allied firm that directly or indirectly controls, is controlled by, or is under common control with that firm), for the procurement planning (inter-alia preparation of feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, Services and Activities Schedule)/ schedule of requirements or the Tender Document etc) of this Tender process; or
- c) **Conflicting Relationship:** has a close business or family relationship with a staff of the Procuring Organisation who: (i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Tender Process, and/or the evaluation of bids; or (ii) would be involved in the implementation or supervision of resulting Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Port throughout the Tender process and execution of the Contract.

4. Punitive Provisions:

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

- a) if his bids are under consideration in any procurement
 - i) Forfeiture or encashment of bid security
 - ii) calling off of any pre-contract negotiations, and;
 - iii) rejection and exclusion of the bidder from the procurement process
- b) if a contract has already been awarded
 - i) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Port;
 - ii) Forfeiture or encashment of any other security or bond relating to the procurement;
 - iii) Recovery of payments made by the Port along with interest thereon at the prevailing rate;

- c) Provisions in addition to above:
- i) Removal from the list of registered suppliers and debarment of the bidder from participation in future procurements of the Procuring Entity for a period for a period not exceeding two years;
 - ii) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
 - iii) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.
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Appendix-NCSM-S2/A5

5 Integrity Pact (IP)

Integrity Pact (IP)

1. The Pre-bid Integrity Pact is a tool to help governments, businesses, and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.
2. Ministry of Finance, Department of Expenditure have mandated (OM No.14(12)/ 2008- E-II(A) dated 19th July 2011) Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact (as per format in Annexure-13) by, depending on the nature of procurements/ contracts above a threshold value. CVC issued a revised Standard Operating procedure (Circular No.04/06/23 dtd 14/06/2023) and stated that, in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector Insurance Companies (PSICs) and Financial Institutions (Fis), shall also adopt and implement the suggested format of Integrity Pact. https://www.cvc.gov.in/sites/default/files/vm21ch10/vm17ch10/3,%2018.%20CVC%20Office%20Order%20No.%2041_12_07%20dated%2004.12.2007.pdf.
3. The nature of procurement and threshold of value is to be decided by the Port with approval of the Board. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure.
4. "The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:
 - a) 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;
 - b) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally;

- c) 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;
 - d) Promise on the part of Bidders not to pass any information provided by Principal as part of business relationship to others and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
 - e) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or allied firms;
 - f) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
 - g) Bidders to disclose any transgressions with any other public/ government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/ are to be reported by the bidders shall be the last three years to be reckoned from date of bid submission. The transgression(s), for which cognizance was taken even before the specified period of three years, but are pending conclusion, shall also be reported by the bidders.;
 - h) Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/ Guidelines etc. as may be applicable to the organization concerned;
5. Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs).
 6. All organisations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and ensure its effective implementation. The final responsibility for implementing Integrity Pact vests with the Head of organisation/CMD/CEO. The Procurement wing of the organisation would be the focal point for the implementation of Integrity Pact.
 7. The provision for the Integrity Pact is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements that meet the criteria laid down.
 8. In all tenders covered under the Integrity Pact, particulars of all IEMs, including their email IDs, should be mentioned instead of mentioning details of a single IEM.

9. Through an appropriate provision in the tender document, it must be ensured that the Integrity Pact is deemed as part of the contract so that its conditions bind the parties concerned. A clause should be included in the Integrity Pact that a person signing the Integrity Pact shall not approach the Courts while representing the matters to IEMs, and they shall await their decision.
 10. In the case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In the case of sub-contracting, the Principal contractor shall take responsibility for the adoption of Integrity Pact by the sub-contractor. It is to be ensured that all sub-contractors also sign the Integrity Pact. In the case of sub-contractors, the TP shall be a tri-partite arrangement to be signed by the Organization, the contractor, and the sub-contractor. In respect of a particular contract, the Integrity Pact shall be operative from the date both parties sign it.
 11. Further details about appointment and role of IEMs is given in the Appendix-NCSM-S2/A4
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Appendix-NCSM-S2/A6

6 Empanelment/ Pre-qualification of Firms

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

1. Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification.
 - a) Registration is to establish genuine identification of the firm (e.g., for e-procurement portals, preferential procurement, and so on).
 - b) Empanelment is to establish prima-facie capability for restricted tendering (not open tendering, e.g., limited tendering panels, also useful in special limited tenders).
 - c) Pre-qualification and Multi-use Lists: Wherever the nature of requirement dictates competition only among equally qualified bidders (without vitiation of prices offered by unqualified bidders), prequalification may be done with open tendering in the prequalification bidding stage. If there are frequent requirements of such nature, prequalification may be done through open process with extended validity of Shortlist of Qualified Bidders (called List of approved Sources, in some organisations, e.g., Ministry of Railways), for example, one year or longer. Such use of a List of Qualified Bidders is known as Multi-use list in many countries, as distinct from Limited Tender Panel (which does not undergo formal pre-qualification process).
2. However, since in common parlance, registration is a word interchangeably for the above three concepts, used by most of departments, this usage is being retained, though the distinction would be clear from the context of usage.
3. For goods and services not available on GeM, and for Works, Port may register Firms for requirements which are specifically used by the Port, periodically. Ensuring an up-to-date and current list of registered, capable, and competent Firms facilitates efficiency, economy, and promotion of competition in public procurement, especially while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder qualification to avoid unnecessary repetition/ duplication of efforts, thereby saving time, especially in the case of emergency

procurement. Registration of the Firms should be done following a fair, transparent, and reasonable procedure and after giving due publicity. In case of goods and services, such registered Firms should be on-boarded on GeM as and when the item or service gets listed on GeM. The list of registered Firms should s for the subject matter of procurement be exhibited on websites of the Port.

4. Ports with a significant volume of procurements may follow their own policies and procedures for registration of Firms, if already existing. The policies and procedures for registration described below is for guidance of Ports, who do not have their own laid down policies/ procedures for this. The Port shall announce the authorities competent to deal with the applications and grant registrations, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the MD/Chairman.
5. Port may use such lists prepared by other Ministries / Departments/Ports as and when necessary. Registered Firms are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items, and Monetary Limits for which they are registered.
6. **Grades (Monetary Limits) for Registration:** Registration should be done by grading 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) Grade-A: Rs. 25 (Rupees twenty-five) lakh and above;
 - b) Grade B: Rupees five lakh to Rs.25(Rupees twenty-five) lakh; and
 - c) Grade C: Rupees One lakh and up to Rupees five lakh
7. **Procedure for Registration:**
 - a) Registration of the Firms should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and published in the form of a booklet for information of the Firms. Timeframes and criteria for registration of new Firms may be clearly indicated;
 - b) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new Firms can be obtained from the response received in 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

NSIC, Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-procurement portal does pre-registration of bidders online. Such data can be a source of information on prospective Firms;

- c) The list of registered contractors/consultants shall be updated on a regular basis (annually). New Firm(s) may be considered for registration at any time, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new Firms, Port 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 the Manual.
- d) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP 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 registered Firms, besides any other penalty or more severe action as deemed fit; and
- e) Along with the new/ renewal application for registration, the Firms should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Port's General Conditions of Contract (GCC). Such GCC should be part of the application.
- f) **Eligibility:**
 - i) 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 registration;
 - ii) Where registration is granted based on partly OEM/ outsourced arrangements/ agreements, it shall be the responsibility of the registered unit, to always keep such arrangements/agreements renewed/alive, to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void ineffective retrospectively from any such dates which the registering authority considers appropriate;
 - iii) Firms should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/ renewal, to enable them to participate in e-procurements.
 - iv) Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders of whom have any interest in deregistered/banned firms;

- g) **Assessment of Capacity and Capability:** The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, manufacturing capability, quality control system, past performance, after-sales service facilities, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Registration of Firms should be done with the approval of CA.
- h) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- i) If considered to be capable after carefully assessing and verifying credentials, the firm may be granted registration with the approval of Competent Authority.
- j) Registration should be for specific trade groups of goods/works/services. For this purpose, all goods/ works/services should be divided into trade groups and the information published on the relevant portals/ websites;
- k) It should be mentioned in the letter of registration that the registration is valid for a fixed period (one to three years). At the end of this period, the registered Firm(s) willing to continue with registration are to apply afresh for renewal of registration. However, the registration would be initially treated as provisional, and it would be treated as confirmed only after the firm has satisfactorily executed one order of the relevant category and value from Port. The extension of validity of registration is not a matter of right and Port reserves the right not to extend such registration without assigning any reason;
- l) All registered Firms should be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered Firms with details of the requirements and monetary value they will supply as well as the validity period, and so on, for which they are registered. The list of registered Firms for the

subject matter of procurement be exhibited on the websites of the Port/ e-Procurement/ portals;

- m) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit (EMD). In other categories and higher monetary limits, the Firm would be treated as any unregistered Firm and not be entitled to the privileges of a registered Firm. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders more than the monetary limit or for other categories, provided the Port is satisfied about the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms;
- n) Performance and conduct of every registered Firm are to be watched by the concerned Department. Port should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the Firm to make a representation) if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or provide sub-standard goods/ works/ services 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;
- o) Port shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the registered suppliers list; (Rule 150 of GFR 2017)

Appendix-NCSM-S2/A7

7 Debarment of Firms from Bidding

1. Debarment

Registration of Service providers and their eligibility to participate in Port's procurements is subject to compliance with Code of Integrity for Public Procurement and satisfactory performance in contracts. 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.

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.

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.

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".

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) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dtd 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of code of integrity. The fact and duration of debarment for this reason by any Port must be promptly brought to the notice of the Member-Convenor of the Standing Committee (under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner. On a periodical basis such cases shall be consolidated and a centralized list or

decentralized lists of such suppliers with the period of debarment must be maintained and displayed on website(s).

A supplier who has been debarred by any Port as this sub para, shall not be eligible for preference under the Make in India Order for procurement by any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading of such debarment on the website(s).

- iv) 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.
- v) 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).
- vi) MD/Chairman may nominate an officer at the rank of HOD or other officer as per DOP to debar the firms.
- vii) 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.
- viii) The Port will maintain list of debarred firms, which will also be displayed on its website.
- ix) Debarment is an executive function and should not be allocated to Vigilance Department.

5. Timeline of Debarment Process:

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

- i) Noticing of delinquency of the firm by the Port – zero day
- ii) Evaluation of evidence and proposal to Competent Authority for banning of the firm - 2 Weeks

- iii) Issue of Show Cause Notice to the firm calling for written and oral submission.
– 1 week.
- iv) Time for submission, including reminders etc – 3 weeks.
- v) Evaluation of firm's submission and giving oral hearing to firm – 3 weeks
- vi) Final Order, indicating opportunity to the firm 2 weeks' time to appeal to the MD/Chairman as appellate authority – 2 weeks.
- vii) Total 12 weeks from zero day, after which debarment period starts.
- viii) Receipt of Appeal and disposal the same by the appellate authority – 4 weeks.

6. Effective Date

For the Port which has carried out the debarment the period of debarment starts from the date of issue of debarment order. 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 such a manner that ongoing procurements are not disrupted.

7. Jurisdiction

It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSEs) etc. of the Ministry/ Department issuing the debarment Order.

8. Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM

It is possible that the firm may be debarred concurrently by more than one Port/Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in sub-paras i) to vii) above are to be kept in mind. Debarment by such bodies like CPSEs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal.

9 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.

10. 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.

11. 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.

12. Safeguarding Procuring Entity's Interests during debarment of suppliers:

Suppliers are important assets for the Port and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Port. Therefore, views of the concerned Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose. (Rule 151 of GFR 2017)

Appendix-NCSM-S2/A8

8 Guidelines for Evaluation of Concurrent Application

Guidelines for Evaluation of Concurrent Application of the MSE and MII Preferences

1. The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, guidelines were issued by DoE. These guidelines are explained below. Examples to illustrate the application of these guidelines are given in the Annex to this Appendix.
2. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category: If Supplier is:	Terminology: Supplier	Acronym for this Para
both MSE & Class-I local supplier	"MSE Class-I local"	M-C1
MSE but not Class-I local supplier	"MSE but non-Class-I local"	M-NC1
not MSE but is Class-I local supplier	"Non-MSE but Class-I local"	NM-C1
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local"	NM-NC1

3. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

Scenario-1: Items for which Nodal Ministry has notified sufficient local capacity and competition. For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid.

Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.

Scenario 2: Items reserved exclusively for procurement from MSEs as per PPP-MSE Order: These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1
- ii) L-1 is "MSE non-Class—I local supplier" - Purchase preference is to be given to "MSE Class-I local supplier" if any, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- iii) If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:

Scenario 3: Items which are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to "MSE Non-ClassI Local Supplier", if any if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
- iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to "Non-MSE Class-I local supplier", if any if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- iv) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to

be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annex to this annexure).

Scenario 4: Items which are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
- ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If the lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
- iii) If conditions mentioned in sub paras 1) and 2) above are not met i.e., L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
 - a. L-1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" — Contract is to be awarded to L-1.
 - b. L-2 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept — contract to be awarded to L-1.

Scenario 5: Items reserved for both MSEs and Class-I local suppliers: These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/ Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.

Scenario 6: Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

Examples of Evaluation of Concurrent Application of the MSE and MII Preferences

1. Given below are the examples to explain the different scenarios that may arise during the concurrent evaluation of MSE and Class-I local suppliers. The scenarios are further divided into the various sub-scenarios considered as 'Distribution (D)' to provide clarity on the

quantity distribution, which shall take place among the MSE and Class-I local suppliers. Please note the acronyms, given in table under para 2 of the Appendix-8 above).

2. Example explaining applicability in scenario explained in Scenario 3 in Appendix-8: (Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.) Item — Desktop computer, Qty — 100 Nos.

(i) **L-1 is 'Non-MSE but Class-I Local Supplier' (NM-C1)** [Scenario 3 -2) in Appendix-8] Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	NM-C1	74 (L1)	75 (L1)	75 (L1)	100 (L1)
2.	B	110	L2	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Does not accept
3.	C	112	L3	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
4.	D	115	L4	M-NC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE)	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

- a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
- b) MSE bidders to be invited for placement of 25% of tendered quantity of 100 Nos. i.e., 25 Nos.
- c) Those MSE bidders are to be invited whose quoted rates falls within 15% margin of purchase preference, to match the L1 price.
- d) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. MSE bidders B (L2) and D (L4) are invited to match L1 price i.e., INR 100/-.
2. Both bidders B and D agree to match the L1 price.
3. The quantity of 25 nos. is distributed equally among bidders B and D i.e., $25/2=12.5$ nos. (say 13 nos.)

4. Bidders B and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5. The remaining quantity of 74 nos. of computers [100-26] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1. Either bidder B or bidder D agrees to match the L1 price.
2. 25 nos. quantity (25% of 100 nos.) is placed on the bidder (B or D).
3. The balance quantity of 75 nos. computers (100-25) is placed on the L1 bidder.

C. Distribution-4 (D-4)

1. None of the MSE bidders agree to match the L1 price. No MSE preference given.
2. Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder “A”, being a Class I bidder.

(ii) L-1 is “MSE but non-Class-I Local Supplier (M-NC1) [Scenario 3 -3] in Appendix-8]. Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	M-NC1	50 (L1)	50 (L1)	50 (L1)	100 (L1)
2.	B	110	L2	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
3.	C	112	L3	NM-C1	Accepts 50 (MII)	Does not accept	Does not accept	Does not accept
4.	D	115	L4	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
5.	E	118	L5	NM-C1	Not Eligible	Accepts 50 (MII)	Does not accept	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Accepts 50 (MII)	Does not accept

- a) First purchase preference is to be given to Class-I local supplier as per PPP-MII Order, for placement of 50% of tendered quantity of 100 Nos. i.e., 50 Nos.
- b) The Class-I local supplier is to be invited whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
- c) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. Class-I bidder C (L3) is invited to match L1 price i.e., INR 100/-.
2. Bidders C agrees to match the L1 price.
3. Bidder C is awarded the quantity of 50 nos.
4. The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1. The bidder C does not agree to match the L1 price, then the next Class-I bidder i.e., Bidder E is invited to match the L1 price.
2. Bidder E agrees to match the L1 price, and the 50 nos. quantity is awarded on Bidder E.
3. The balance quantity of 50 nos. computers (100-50) is placed on the L1 bidder 'A'.
4. In case, Bidder E does not agree to match the L1 price, the next Class-I bidder is invited which is Bidder 'F'.
5. Bidder F agrees to match the L1 price, then the 50 nos. of quantity are awarded to Bidder F, while the balance quantity of 50 nos. computers is placed on the L1 bidder 'A'.

C. Distribution-4 (D-4)

1. None of the Class-I local suppliers agree to match the L1 price. No MII preference given.
2. Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder 'A'.

(iii) **L-1 is "Non-MSE non-Class-I local supplier" (NM-NC1)** [Scenario 3 -4) in Appendix-8].
Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Bidder Status	D-1	D-2	D-3	D-4	D-5	D-6	D-7
1.	A	100	L1	NM-NC1	37 (L1)	37 (L1)	37 (L1)	37 (L1)	37 (L1)	50 (L1)	75 (L1)
2.	B	110	L2	NM-C1	Accepts 37 (MII)	Accepts 38 (MII)	Does not accept	Does not accept	Does not accept	Accepts 50 (MII)	Does not accept
3.	C	112	L3	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 25 (MSE)
4.	D	115	L4	MC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE) + 38 (MII)	Accepts 13 (MSE) + 37 (MII)	Does not accept	Does not accept	Does not accept

5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Does not accept	Not Eligible	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Accepts 38 (MII)	Not Eligible	Does not accept
7	G	120	L7	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible

- First purchase preference is to be given to MSEs as per PPP-MSE Order.
- MSE bidders having their quoted rates within 15% margin of purchase preference to be invited for placement of 25% of tendered quantity, subject to matching the L1 price.
- The next purchase preference is to be given to Class-I local supplier as per PPP-MII Order, whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.
- Post these purchase preferences, the balance quantity is placed on the L1 bidder who is Non-MSE non-Class-I local supplier.
- Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

- MSE bidders C and D are invited to match L1 price i.e., INR 100/-. Bidder F and G, being the MSE bidders are not invited since their quoted prices falls beyond the margin of preference of 15%.
- Both bidders C and D agree to match the L1 price.
- The quantity of 25 nos. is distributed equally among bidders B and D i.e., $25/2=12.5$ nos. (say 13 nos.)
- Bidders C and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
- The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers (50% of 74).
- Bidder B, being a Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
- Bidder B agrees to match the L1 price. The quantity of 37 nos. of computers is awarded to bidder 'B'.

8. The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

B. Distribution-2 (D-2)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C agrees to match the L1 price, but MSE bidder D does not agree to match the L1 price.
3. The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder C.
4. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5. Bidder B, being the Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6. Bidder B agrees to match the L1 price. The quantity of 38 nos. of computers is awarded to bidder 'B'.
7. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

C. Distribution-3 (D-3)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C does not agree to match the L1 price, but MSE bidder D agrees.
3. The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder D.
4. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 38 nos. of computers is awarded to bidder 'D'.
7. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

D. Distribution-4 (D-4)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C and D agree to match the L1 price. The quantity of 25 nos. is distributed equally among bidders B and D i.e., $25/2=12.5$ nos. (say 13 nos.) each.

3. The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 37 nos. of computers is awarded to bidder 'D'.
6. The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

E. Distribution-5 (D-5)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C agrees to match the L1 price, however, bidder D does not agree. Hence, the 25% of 100 nos. of computers i.e., 25 nos. are awarded to MSE bidder C.
3. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5, say 38 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D also does not agree to match the L1 price. The next class-I local supplier 'E' is invited that does not agree either. The next class-I local supplier 'F' is invited (who happens to be a MSE bidder as well, however, since the quoted price of bidder 'F' in case of MSE preference was beyond 15% margin of preference, hence it was not invited to match the L1 price while going for MSE preference). For MII preference, the price quoted is within the margin of 20%. The bidder 'F' agrees to match the L1 price. The quantity of 38 nos. of computers is placed on bidder 'F'.
6. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

F. Distribution-6 (D-6)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. Neither of the MSE bidders (C and D) agrees to match the L1 price. Hence, no MSE purchase preference is given.

3. The next purchase preference is given to Class-I local supplier as per the MII Order for the 50% of the tendered quantity i.e., for 50 nos. of computers. Bidder 'B' being the lowest quoting Class-I local supplier with its quoted price falling within the margin of purchase preference of 20% is invited to match the L1 price.
4. Bidder 'B' agrees to match the L1 price. The quantity of 50 nos. of computers is awarded on bidder 'B'.
5. The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder 'A'.

G. Distribution-7 (D-7)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
 2. MSE bidder 'C' agrees to match the L1 price only. Hence, 25% of the total tendered quantity i.e., 25 nos. of computers are awarded on the MSE bidder 'C'.
 3. The next purchase preference is to be given to Class-I local supplier as per the MII Order for the 50% of the balance quantity of 75 nos. i.e., for 37.5 or say 38 nos. of computers. First Class-I bidder invited is bidder 'B' to match the L1 price. Bidder 'B' does not agree to match the price. Subsequently, bidders 'D,' 'E' and 'F' are invited one by one, after each of the bidder does not agree to match the L1 price.
 4. None of the Class-I local suppliers agree to match the L1 price. Hence, no purchase preference under MII order is given.
 5. The balance quantity obtained, after the placement of 25 nos. quantity of computers on MSE bidders, is placed on bidder 'A' the L1 bidder for 75 nos. computers.
3. Example explaining applicability in Scenario 4 in Appendix-8 (Non-Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.). Item — Software License, Unit — 100 Nos..
- (i) **L-1 is "Non-MSE but Class-I Local Supplier"** [Scenario 4 -2) in Appendix-8]. Details of bids received:

S. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE but Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"MSE Class-I local supplier"
4.	D	115	L4	"MSE Class-I local supplier"

5.	E	118	L5	"Non MSE non-Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

- Here, purchase preference is to be given to the lowest quoting 'MSE Class-I local supplier,' provided its rate falls within the purchase preference of 15%.
- Bidder 'C' is MSE Class-I local supplier with price within the 15% margin of preference. Bidder C is invited to match the price of L1. If agreed, the entire order (100 nos. of software licenses) is to be placed on Bidder C.
- If lowest quoting 'MSE Class-I local supplier' (Bidder 'C') does not agree to match the L1 price, the next higher 'MSE Class-I local supplier' i.e., bidder 'D' is invited to match the L1 price. If agreed, the entire order is to be placed on bidder 'D.'
- Bidder 'F' though MSE Class-I local supplier, cannot be considered since its price falls beyond the 15% margin of preference.

(ii) **L-1 is "MSE but non-Class-I Local Supplier"** [Scenario 4 -1) in Appendix-8]: The approach explained in example 2. (i) above to be followed.

(iii) **L-1 is neither "MSE Class-I Local Supplier" nor "MSE Class-I Local Supplier" is eligible** [Scenario 4 -3) in Appendix-8], then:

- L-1 is MSE but non-Class-I local supplier: Entire quantity [100 nos. of software license] is to be placed on the L-1; or
- L-1 is Non-MSE but Class-I local supplier: Entire quantity [100 nos. of software license] to be placed on the L-1.

(iv) **L-1 is "Non-MSE non-Class-I Local Supplier"**. Details of bids received:

S.No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non-Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"Non MSE but Class-I local supplier"
4.	D	115	L4	"MSE but non- Class-I local supplier"
5.	E	118	L5	"Non MSE but Class-I local supplier "

6.	F	120	L6	"MSE but non- Class-I local supplier"
7.	G	125	L7	"MSE Class-I local supplier"

1. First, MSE preference shall be exercised. Hence, lowest quoting MSE but non-Class-I local supplier is invited to match the price of L-1. Bidder 'B' has quoted the price that falls within the purchase preference of 15%. If Bidder 'B' agrees, the entire order is to be placed on bidder 'B.'
2. If bidder 'B' does not agree, bidder 'D' shall be invited (price falling within the purchase preference of 15%), to match the L-1 price. If agreed, entire order to be placed on bidder 'D.'
3. If bidder 'D' also does not agree, now, purchase preference to Class-I local supplier shall be provided. Bidder 'F' cannot be considered since the quoted price is beyond the margin of preference of 15%.
4. Bidder 'C' is invited to match the L-1 price [quoted price within the purchase preference of 20%, as per the PPP-MII Order]. If bidder 'C' agrees, the entire order is to be placed on 'C.'
5. If bidder 'C' does not agree, bidder 'E' to be invited, as the quoted price is within the purchase preference of 20%. If bidder 'E' agrees, the entire order is to be placed on bidder 'E.'
6. If the non MSE but Class-I local supplier, bidder 'E' also does not agree to match the L-1 price, then the entire order is to be placed on the L-1 i.e., bidder 'A'.

Appendix-NCSM-S2/A9

9 FAQs in Respect of Public Procurement Policy for MSEs

FAQs in Respect of Public Procurement Policy for MSEs Order, 2012

Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.

Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?

Ans. Yes, out of 25% target of annual procurement from MSEs (Not in the specific tender), a sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC) / Scheduled Tribe (ST) entrepreneurs and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneur will also be met from other MSEs.

Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated 26th June 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

Q.No.4: What is the date of implementation of the policy?

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

Q.No.5: Is the Policy transparent, competitive, and cost effective?

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in

accordance with a system which is fair, equitable, transparent, competitive, and cost effective.

Q.No.6: Is the policy implemented in parts or fully from its inception?

Ans. As per Gazette Notification (S.O. 5670(E) dated 8th November 2018, it is mandatory for all Central Government Ministries / Departments/ CPSEs to procure at least 25% of their annual procurement from MSEs including 4% from MSEs owned by SC/ST entrepreneur and 3% from MSEs owned by women entrepreneurs

Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?

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

Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?

Ans. (i) Price quotation in tenders: In tender, participating Micro and Small Enterprises, quoting price within price band of L1+15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such MSE shall be allowed to supply up to 25 per cent of total tender value.

(ii) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).

Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop MSE Vendors to achieve their targets for MSEs procurement?

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal. To develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme.

Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSEs must take the following steps:

- i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSEs for SC/STs and Women.
- ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS). iv. A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tender process. However, exemption from paying of Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?

Ans. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSEs for exemption from 25% target on a case-to-case basis and monitor achievements under the Policy.

Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?

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

Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?

Ans. Given their unique nature, Defence armament imports will not be included in computing 25% goal for M/o Defence. In addition, Defence Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defence sector, by Ministry of Defence itself in accordance with suitable procedures to be established by them.

Q.No.15: From where can the details of the Policy be obtained?

Ans. Policy details are available on the website of this office at www.dcmsme.gov.in.

Q.No.16: Is this policy mandatory under any Act?

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

Q.No.17: How many items are reserved for exclusive purchase from MSEs?

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

Q.No.18: Whether this policy is applicable for works/ trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order, 2012.

Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?

Ans. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

Q.No.22: Which are the MSEs owned by SC/ST enterprises?

Ans. The definition of MSEs owned by SC/ ST is as given under:

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

Q.No.23: Can the Central Government Ministries/ Departments/ CPSEs who have a meagre value of total procurement be exempted from the Policy?

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSEs, irrespective of the volume and nature of procurement.

Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?

Ans. The Review Committee may consider any request of Ministries / Departments / CPSEs for exemption from the present 25% procurement targets on a case-to-case basis.

Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at Sl. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012. Accordingly, the description of Sl. No. 202 as indicated in the English version of the Reserved List will be applicable.

Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f. 01.07.2020. Udyam Registered MSMEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration?

Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self-certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSEs and State Govts.

Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSEs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?

Ans. The benefits of PPP should be given to all eligible MSEs irrespective of relevance of product Category and as per Sl. No. 3 of FAQ.

Q.No.30: Can the relaxation of norms for start-ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities (O.M.No.F.20/2/2014PPD(Pt.) dated 20.09.2016 issued by DoE).

Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in GFR Rules 130, 143, 177 & 197.

Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?

Ans. There is no such provision under the Policy. The procuring entity may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSEs.

Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

Q.No.38: Have all the CPSEs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?

Ans. Most of the CPSEs are uploading their procurement details on the portal.

Q.No.39: Is there any provision to take action against the procuring agency for noncompliance of PPP-MSE under the Policy?

Ans. No, there is no such provision in the Policy.

Q.No.40: What is the objective of the Policy?

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through: - Increased participation in Government purchase.

- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.

Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs?

Ans. To achieve the target Government / CPSEs they can procure.

The items from the list of 358 items reserved for procurement from MSEs.

Items which are being manufactured by MSEs, besides reserved items.

Q.No.42: How is the status of Enterprises as MSEs be verified?

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022. As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General

Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

Q.No.43: Can sub-contracting be considered under the procurement target from MSE?

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

Q.No.45 What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSEs?

Ans. CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.

- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs.
- All CPSEs have been requested to procure goods and services from MSEs, through GeM portal only.
- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

Appendix-NCSM-S2/A10

10 Arbitration

1. Arbitration in Contracts

1. **Arbitration Agreement:** If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015 and 2021]. For this purpose, when the contract is with a domestic Contractor, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the Tender Document (Please refer to the Model Tender Document) indicating the arbitration procedure to be followed, based on which the Arbitration Act shall become applicable.
2. This Agreement shall continue to survive termination, completion, or closure of the Contract for 120 days after that. The venue of arbitration should be the place from where the contract has been issued.
3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to the Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in the MSMED Act 2006, these provisions shall prevail over this Agreement.
4. **Government Guidelines on Arbitration in Contracts:** Department of Expenditure, Ministry of Finance has issued (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024) following guidelines for arbitration in contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises [CPSEs], Public Sector Banks [PSBs] etc. and Government companies):
 - a) Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.
 - b) As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crores. This figure is regarding the value of the dispute (not the value of the contract, which may be much higher). It may be specifically mentioned in the bid conditions/ conditions

of the contract that arbitration will not be a method of dispute resolution in all other cases.

- c) Inclusion of arbitration clauses covering disputes with a value exceeding the norm specified in sub-para (b) above should be based on careful application of mind and recording of reasons and with the approval of the Managing Director.
- d) In matters where arbitration is to be resorted to, institutional arbitration may be given preference (where appropriate, after considering the reasonableness of the cost of arbitration relative to the value involved).

General or case-specific modification in the application of the above guidelines may be authorised by the Managing Director.

2. Foreign Arbitration

1. The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.
2. When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.
3. The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true, especially for large-value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or India's arbitration rules, whereby it may be in India or any neutral country.

3. Notice for Arbitration

1. 'The Appointing Authority' to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
2. In the event of any dispute, if the Adjudicator fails to decide within 60 days, or the mediation is terminated then, parties to the contract, after 60 days but within 120 days of 'Notice of Dispute' shall request the Appointing Authority through a "Notice for Arbitration" in writing requesting that the dispute or difference be referred to arbitration.

3. The “Notice for arbitration” shall specify the matters in question or the subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

4. Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of the Arbitrator(s)

5. Appointment of Arbitrator

Notwithstanding the procedures outlined in the following paragraphs, Arbitrators can be appointed through mutual agreement.

1. Qualification of Arbitrators:

- a) In the case of retired officers of The Procuring organisation, they shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 year prior and must not be over 70 years of age on the date of Notice for arbitration.
- b) In the case of serving officers, they shall not be below JA Grade level.
- c) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as an officer of the Procuring Organisation, expressed views on any or all the matters under dispute or differences. A declaration to this effect shall be taken from the Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely because one or more arbitrators had, in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
- d) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
- e) Not be other than the person appointed by The Appointing Authority, and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2. **Panel of Arbitrators:**

The procuring Organisation may prepare, with the approval of the head of the procuring organisation, a panel of serving and retired officers who are willing and qualified (as per para above) to be empanelled as Arbitrators based on integrity, ethics, the experience of dealing in contracts/ tenders, temperament of taking fair decisions, feedback, general image, career profile etc. Such persons should have vigilance clearance and should not be working in the vigilance wing. The performance of empanelled arbitrators should be reviewed annually. The empanelment of a retired officer as arbitrator shall be limited to three procuring entities only, and at any given time, a maximum of two arbitration cases shall be assigned to any arbitrator in Port.

3. **Replacement of Arbitrators:**

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a reconstituted Tribunal may, at its discretion, proceed with the reference from the stage at which the previous arbitrator (s) left it.

4. **Appointment of Arbitrator:**

- a) Appointment of Arbitrator where the applicability of section 12 (5) of the Arbitration and Conciliation Act has been waived off:
 - i) In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the procuring organisation, not below Junior Administrative Grade, nominated by the Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the designated Appointing Authority.
 - ii) In cases not covered by sub-para i) above, the Arbitral Tribunal shall consist of a panel of three serving officers not below Junior Administrative Grade or two serving officers not below Junior Administrative Grade and a retired officer (retired not below the rank

of Senior Administrative Grade Officer), as the arbitrators. For this purpose, the Appointing Authority shall send a panel of at least four (4) names of Officers, which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator, to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request to him. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).

- iii) The serving officer working in arbitral tribunal in the ongoing arbitration cases as per sub-para i) and ii) above can continue as arbitrator in the tribunal even after his retirement.
- b) Appointment of Arbitrator where the applicability of Section 12 (5) of the Arbitration and Conciliation Act has not been waived off:
 - i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority

shall appoint at least one out of them as the arbitrator within 30 days from the receipt of the names of the Contractor's nominees.

- ii) In cases where the total value of all claims in question added together exceeds Rs. 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Officers, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days of the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).
- c) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed with the appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.
- d) **Failure to Appoint Arbitrators:** If the Appointing Authority fails to appoint an arbitrator, or two appointed arbitrators fail to agree on the third arbitrator, within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must

complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

6. The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.
2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion and with the consent of both the parties, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration. The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.
3. If the Adjudication and/ or Mediation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach the designated authority for such mechanisms before the Arbitration proceedings are started.
4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless it has granted an extension.
5. On receipt of such claims, the respondent shall submit its defence statement and counterclaim (s), if any, within 60 days of receipt of the copy of claims, unless the Arbitral Tribunal has granted an extension.
6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.
7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
8. **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis, and no

adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.

9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for an extension of time awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.
10. **Cost of Arbitration and Fees of the Arbitrators:** The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Port and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Port or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee. The arbitrator shall be entitled to a 50 per cent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act. Besides the above, the Arbitrator shall also be entitled to this extra fee in cases where the Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.
11. **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast-track procedure either before or after the commencement of the arbitration. The award in fasttrack arbitration is to be made out within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:
 - a) The dispute is to be decided based on written pleadings only. Port may encourage Fast Track Procedure based on written pleadings only.
 - b) The arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
 - c) An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.

- d) The parties are free to decide the fees of the arbitrator(s) for a fast-track procedure.
- 12. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal to seek interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court to make interim awards in the proceedings before it.
- 13. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations where the disclosure is necessary for the implementation or execution of the arbitral award.
- 14. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Port, continue during the arbitration proceedings, and no payment due or payable by the Port shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.
- 15. **The Arbitral Award:** In the case of the Tribunal, comprising three members, any ruling on an award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it. It shall be further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act. The award of the arbitrator shall be final and binding on the parties to this contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of a similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

7. Challenging Arbitration/ Judicial Awards

- 1. In matters covered by arbitration/ court decisions (Notified vide OM No. F. 11/21/2024-PPD issued by Department of Expenditure dated 03.06.2024), the guidance contained in 'General Instructions on Procurement and Project Management'

dated 29.10.2021 (Notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021) should be kept in mind. In cases where there is a decision against the government/ public sector enterprise, the decision to challenge/ appeal should not be taken routinely, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.

2. In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest, which may become payable to the Ministry/ Department should the subsequent court order require a refund of the said amount.
3. The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first for payment of lenders' dues, second for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account after settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, 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).
4. Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken routinely, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals, etc., sometimes resorted to postpone the problem and defer personal accountability. Casual appeals in arbitration / court cases have resulted in the payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.
5. The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court

awards should not be routinely appealed without due application of mind to all facts and circumstances, including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and, after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.

6. Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest at a rate that is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in the aggregate, it is in the 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.
7. The only circumstances in which such payment need not be made are when 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 this are liable to be held personally accountable for the additional interest arising in the event of the final court order going against the Port (As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021).

Appendix-NCSM-S2/A11

11 GFR-2017 - RULES

(updated upto 10-7-2024)

Chapter – 6: PROCUREMENT OF GOODS & SERVICES

PROCUREMENT OF SERVICES

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 GeMCPPP]. 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.

Appendix-NCSM-S2/A12

12 Quality and Cost Based Selection (QCBS)

1. Quality and Cost of Services

- a) In QCBS system of selection, both the quality of the proposal and the cost of the services are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of service or work cannot be ignored.
- b) Quality/ Technical scores are assigned to proposals based on specified quality criteria. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal is prescribed and proposals below this benchmark are not considered for Financial evaluation. The Financial Proposals are also given cost-score based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them.

For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the “cost” shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. *It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the ‘cost’ approximates the price based LCS system.* This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

- c) Procuring entities are allowed (General Instructions on Procurement and Project Management - DoE's OM NO.F.1/1/2021-PPD dtd 29th October, 2021) to use QCBS for procurement of works and non-consultancy services in the following cases.

In this para, instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors for CPSEs):

- i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or

- ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore, this method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.
- iii) QCBS shall not be used in the procurements planned to be done through Reverse Auction or through Limited tenders.

Notes: *In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:*

- a) *In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.*
 - b) *In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.*
- d) The principles of QCBS shall be as provided in Rule 192(i), (ii), and (iii) of the GFR (Please refer to Manual for Procurement of Consultancy services for such principles). However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

2. The Competent Authority: the Competent Authority for allowing QCBS method in procurement of works/ NC Services shall be as follows:-

- a) **For declaring a procurement as QOP:**
 - i) Where the Port/project executing authority is covered by Rule 1 of GFR (i.e. - Central Government Ministries/Departments, attached/ subordinate bodies, and Autonomous Bodies (except those Autonomous Body with separate Financial Rules approved by the Government)), the Secretary of the Ministry/ Department.
 - ii) Where the Port is a CPSE, the Board of Directors of the CPSE.
 - iii) In case authority to approve procurement on nomination basis is lower than Secretary of the Ministry/ Department (or Board of Directors in case of CPSEs), such authority will also be competent to approve the procurement as QOP.
- b) For Non-consulting Services not exceeding Rs. 10 crores in value:

- i) Where the Port/project executing authority is covered by Rule 1 of GFR (i.e. - Central Government Ministries/Departments, attached/ subordinate bodies, and Autonomous Bodies (except those Autonomous Body with separate Financial Rules approved by the Government)), by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
- ii) Where the Port 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. Special Technical Committee (STC):

- a) In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-
 - i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
 - ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
 - iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
 - iv) Not more than one member representing the Port who may inter alia provide administrative support to the Committee.
 - v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- b) The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in sub-para 3) above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the Port.
- c) The STC shall make specific recommendations on the following matters:-
 - i) The weight to be given to non-financial parameters (not exceeding 30%). However, the weight for the "technical" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the Tender Document. *It may be noted that theoretically QCBS system with weight*

of 100% (hundred percent) for the 'cost' is same as the price based LCS system.

- ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.
 - d) The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in sub-para 3) above who approved the declaration of the procurement as QOP.
 - e) 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 sub-para c) above in lieu of the STC. The composition of the Technical Committee shall follow the provisions of sub-paras a) above.
4. **Grounds for Declaring a Procurement to be Quality Oriented Procurement:** A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.
 5. **Tender Documents - Fixing/ Selection of the Evaluation/ Qualification Criteria:** 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. Weightage may also be given for timely completion of past projects of similar nature by the bidder.
 6. **Pre-bid Meeting:** 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.
 7. **Fixing of Scoring/ Marking 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 outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is

only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

- b) It is better to specify minimum marks for meeting the qualifying criteria specified. *In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as qualifying benchmark for quality of the technical proposal shall be prescribed and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes. Bids scoring less than the minimum threshold shall not be considered for further evaluation. Since the weightage of the cost element adopted in NC services is as high as 70 (seventy) percent, financial considerations would dominate the selection, though to a lower extent as compared to LCS (Least Cost Selection – L1 basis). In such cases, it is essential to ensure that the minimum qualifying benchmark in the technical evaluation is set sufficiently high, to weed out low quality bids with low prices.*
- c) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- 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 (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

8. Evaluation of QCBS Bids

For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved. Joint Ventures may be avoided in general in Non-consultancy services and particularly in QCBS system in NC Services.

- a) **Weightages:** The proposed weightages for quality and cost shall be specified in the Tender. Under QCBS selection, the technical proposals will be allotted weightage of not more than 30% (Thirty per cent) while the financial proposals will be allotted weightages of 70% (Seventy per cent) or more as declared in the Tender.

- b) **Qualifying Benchmark:** Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as qualifying benchmark for quality of the technical proposal shall be prescribed and indicated in the Tender Document along with a scheme for allotting marks for various technical criteria/ attributes.
- i) Bids scoring less than the minimum threshold shall not be considered for further evaluation.
 - ii) Since the weightage of the cost element adopted in NC services is as high as 70 (seventy) percent, financial considerations would dominate the selection, though to a lower extent as compared to LCS (Least Cost Selection – L1 basis).
 - iii) In such cases, it is essential to ensure that the minimum qualifying marks in the evaluation is set sufficiently high, to weed out low quality bids with low prices.
- c) **Evaluation of Quality Score:** Proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks.
- d) **Evaluation of Financial Score:** Similarly, proposal with the lowest evaluated cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer.
- e) **Weighted QCBS Score:** The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the service providers shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with higher technical score will be H-1
- f) **QCBS Formula:** In such a case, an Evaluated QCBS Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the Tender Document

g) **Example:** Following example illustrates the evaluation of QCBS.

- i) In a particular case of selection of service provider, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy-five) and the weightage of the technical bids and financial bids was kept as 30: 70 (Thirty : Seventy). In response to the Tender Document, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks B: 80 Marks C: 90 Marks

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

A: $75/90 = 83$ points; B: $80/90 = 89$ points; C: $90/90 = 100$ points

- iii) The financial proposals of each qualified service provider were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

A: Rs.100; B: Rs.104; C: Rs.106.

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

A: $100/100 = 100$ points; B: $100/104 = 96$ points; C: $100/106 = 94$ points

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

Proposal A: $83 \times 0.30 + 100 \times 0.70 = 95$ points.

Proposal B: $89 \times 0.30 + 96 \times 0.70 = 94$ points

Proposal C: $100 \times 0.30 + 94 \times 0.70 = 96$ points.

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

Proposal A: 95 points: H-2

Proposal B: 94 points: H-3

Proposal C: 96 points: H-1

- vii) Proposal C at the evaluated cost of Rs.106 (Rupees One hundred and six) was, therefore, declared as winner and recommended for approval, to the competent authority.

9. QCBS - Risks and Mitigations:

Risk-1

Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Port to monitor the assignment.

Mitigation-1

Selection of QCBS should be justified and applied only under circumstances mentioned above.

Risk-2

Weightage of Technical: Cost may not be proportional to quality requirements.

Mitigation-2

Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.

Risk-3

Technical criteria may not be relevant to realization of quality of assignment.

Mitigation-3

Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.

Risk-4

Marking Subjectivity: The scheme of marking or its application may be subjective.

Mitigation-4

It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Port should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

