Chapter 4: Modes of Procurement and Bidding Systems

described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also. This procedure is slightly more complex and is likely to provide better ViM than direct procurement without quotation and hence is suitable for marginally higher thresholds

(Rule 155 of GFR 2017)

4.10.2 Terms and Conditions

i) The controlling ministry may lay down an annual ceiling value per office/unit for such procurements;

ii) In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent accountal may also be considered.

iii) This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.

iv) Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini LTE) is of essence of this mode.

v) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 8); and

vi) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

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<thead>
<tr>
<th>4.10.3 Direct Procurement by Purchase Committee - Risks and Mitigations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Risk</strong></td>
</tr>
<tr>
<td>Risks are the same as in the case of direct procurement without quotation mentioned above, with mitigation due to involvement of three members. Over a period of time intentionally or otherwise, the due diligence of enquiries from market may degenerate into a system of floating and obtaining of limited tenders, leading to delays, development of nexus and crony suppliers.</td>
</tr>
</tbody>
</table>
4.11 Purchase through Central Purchase Organisation or other Organizations

4.11.1 Departments/ Organisations, who have not built-up their own infrastructure for purchase, may place their indents on its behalf with the approval of its Secretary on other Canalized agencies authorised by the Government or other Government Ministries/ Departments, if mutually agreed. *Procurements by such agencies would have to conform to these Procurement Guidelines.* Possibilities of other Ministries/ Departments or Sister Organisations having spare-able quantities of required material may be explored. In such cases Indents can be placed on them for supply of requirements, at mutually agreed terms.

4.11.2 Terms and Conditions

i) Usual formalities for Preparation, Budgetary Provisions and approval/ signing of Indents

ii) The Indent in such cases, in the format prescribed by such Organisations, should be signed by an officer to whom such powers have been delegated.

iii) FA of the Department may sign a declaration about availability and reserving of Budgetary provisions required

iv) Modalities of Procurement, Inspection, Tracking of Supplies and Payment may be settled with the Organisation

| 4.11.3 Purchase through CPO - Risks and Mitigations |
|--------|-----------------------------------------------|
| **Risk** | **Mitigation** |
| Since it is a purchase by a third party, the Indent must be detailed and self-sufficient to ensure all Technical and Commercial requirements. | Mitigation strategies are to ensure vetting and certificates from technical, finance and procurement wing about completeness of Indent, before despatch. In critical and large procurements, liaison may be maintained with the procuring organisation. |
| There is also a risk of delays in finalisation of contract by the Procuring Entity, which may not be responsive to indenting organisations urgencies, especially if procurement involves clubbing of Indents from a number of organisations. | To mitigate such risk liaison may be maintained with the Procuring Entity. In case abnormal delay is taking place, small procurement to tide over urgencies may be made directly. |
| Another risk is that the Supplier may not | To mitigate this, proper commercial |
4.11.3 Purchase through CPO - Risks and Mitigations

<table>
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<tr>
<th>Risk</th>
<th>Mitigation</th>
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<tr>
<td>feel answerable to the Indenter and may not be responsive towards delivery, quality and after sales support. If problems arise, it may require a dilatory tripartite correspondence.</td>
<td>clauses may be included in the Indent to ensure responsiveness of supplier to the Indentor. Liaison with Procuring Organisation would also mitigate such risks.</td>
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4.12 Bidding Systems

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

4.13 Single Stage Bidding System

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

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

4.13.2 Single Stage Two Envelops System (Two Bid System) (Rule 163 of GFR 2017): In technically complex requirements but where capability of source of supply is
still not crucial and value of procurement is not low, a two envelop system may to be followed.

i) The tenderers should be asked to bifurcate their quotations in two envelops. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelops are to be submitted together in a sealed outer envelope;

ii) If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids;

iii) The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the TC with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;

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

4.13.3 Single Stage Multiple Envelops System with pre-qualification: As discussed below, 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 (as described below, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop 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 him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders. In the first instance on the bid opening date only the PQB envelops (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;

4.13.4 **Pre-qualification Bidding (PQB)**

i) In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding – please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC – for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/normal mode of procurement of goods and an eligibility criteria clause as part of single/two envelop/cover tendering should suffice in normal/routine situations. PQB bidding as a separate stage is contraindicated in the following circumstances:*

a) Where procurement can be done through limited tender enquiries;

b) Where the Procuring Entity has at least three registered bidders of the category and grade matching tendered scope of procurement and financial limit;
c) Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, Commercially Off The Shelf (COTS) requirements; and

d) 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. A clear-cut, fail-pass post-qualification criteria can be specified in a three envelop single stage bidding (instead of two stage bidding), so that a bidder’s risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.

ii) **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher prices of procurement/works/services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/contractor and thus vitiate fair competition for capable vendors/contractors to the detriment of the buyer’s objectives. A misjudgement in either direction may be detrimental. Certain guidelines\(^{50}\) regarding the framing of PQC have been laid down. A sample PQC is given in Annexure 9. Due consideration should be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs, past successful bidders, a call may be taken – whether PQC should apply to full quantity/packages or be proportional to part quantity/package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC should therefore be carefully decided for each procurement with the approval of CA for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.

iii) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the

\(^{50}\) [http://cvc.nic.in/six.pdf](http://cvc.nic.in/six.pdf)
same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantities of requirements. A minimum period of 45 (forty-five) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days.

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

v) **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals — RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

### 4.13.5 Pre-Qualification Bidding – Risks and Mitigations:

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<th>Risk</th>
<th>Mitigation</th>
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<tr>
<td>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 is very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous,</td>
<td><strong>Lay down</strong> criteria when prequalification in single stage or two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.</td>
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</table>
### 4.13.5 Pre-Qualification Bidding – Risks and Mitigations:

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<tr>
<td>Exhaustive and yet specific. Also, there should be fair competition.</td>
<td>Two stage PQB should be done only in appropriately justified situations. Alternatively Single Stage multiple envelop system may be used for prequalification, in which chances of anti-competitive behaviour and time-taken is significantly lesser.</td>
</tr>
<tr>
<td><strong>Dangers of Anti-competitive bidding:</strong> Since in a two stage PQB, shortlisted bidders are announced, there is heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of bidding.</td>
<td></td>
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<tr>
<td><strong>Two Stage PQB is a time-consuming process.</strong></td>
<td></td>
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<tr>
<td><strong>Contentious and Disputes:</strong> Both the successful and unsuccessful bidders tend to view PQB process as a means for creating rights/ privileges/ entitlement for them by way of hair-splitting, contentious or viciously legalistic interpretations of PQC criteria, disregarding the very rationale of the PQB and PQC.</td>
<td>In the PQC a caveat against such tendencies may be included, asserting the right of procuring agency to interpret the PQC on common usage of terminologies and phrases in public procurement instead of legalistic and hair-splitting judgements and that their decision in this regard would be final.</td>
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### 4.14 Two Stage Bidding - Expression of Interest Tenders – Market Exploration

4.14.1 There are instances where the equipment/plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:

i) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;

iii) The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or

iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

(Rule 164 of GFR 2017)

4.14.2 The procedure for two stage bidding shall include the following, namely:

i) In the first stage of the bidding process, the procuring entity shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, which are prima facie considered technically and financially capable of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stakeholders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc. in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;
ii) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the procuring entity shall not modify the fundamental nature of the procurement itself;

iii) In the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and

iv) Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

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

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

i) A copy of the advertisement;

ii) **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;

iii) **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
iv) **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;

v) The EoI document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

vi) **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI.

| **Table 1:** An example of EoI eligibility criteria |
|---------------------------------|-----------------|----------------|----------------|
| **Criteria**                     | **Sub-criteria** | **Weightage** | **Break-up of Weightage** |
| Past experience of the firm with similar requirements | A*              |                |                 |
| Financial strength of the vendor | B*              |                |                 |
| Turnover figures of the last three years | B1*             |                |                 |
| Net profit figures of the last three years | B2*             |                |                 |
| Quality accreditations, licensing requirements | C*              |                |                 |
| Manufacturing capabilities/tie-ups | D*              |                |                 |
| After-sales support infrastructure | E*              |                |                 |
| Product support                  | F*              |                |                 |

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

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

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

4.15 Electronic Procurement (e-Procurement)

It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process51. In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers. In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender may exempt such case from e-procurement. National Informatics Centre (NIC) has an e-Procurement portal called Government e-Procurement of NIC (GePNIC). There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. Details about the process of e-procurement are available

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51 Rule 160 (iii) of GFR, 2017 stating that the condition for mandatory e-procurement will not apply to procurements made by Ministries / Departments through DGS&D rate contracts has been deleted vide OM No.F.1/26/2018-PPD issued by Department of Expenditure dated 02.04.2019
from the service providers. Appendix 3 also gives such generic details of the e-
Procurement process. (Rule 160 of GFR 2017)

4.16 Electronic Reverse Auction (RA)
Electronic Reverse Auction is a type of auction (classified as dynamic procurement
method) where the starting price, bid decrement, duration of auction, maximum
number of automatic extensions are announced before start of online reverse
auction. If required, RA may be preceded by an e-Procurement stage of eligibility/
PQB to shortlist competent bidders who would be allowed to participate in the RA.
The shortlisted bidders can after the start of RA start bidding online in an iterative
process wherein the lowest bidder at any given moment can be displaced by an
even lower bid of a competing bidder, within the duration of the RA. If a new lower
bid is received within last few minutes (say two minutes) of closing time, the closing
time may get automatically extended by few minutes (say five minutes) for others to
respond. Maximum number of such extensions may be stipulated (say five). The
most favourable bid at the end of stipulated / extended time is declared as
successful. While permitting use of RA, CVC has asked the
Departments/organisations to themselves decide on reverse auction for purchases
or sales and work out the detailed procedure in this regard52. It has, however, to be
ensured that the entire process is conducted in a transparent and fair manner. A
procuring entity may choose to procure a subject matter of procurement by the
electronic reverse auction method, if:

   i) Items for Reverse Auction may be selected carefully. Items of strategic,
critical and vital nature, items in short supply in market and where there
are only a few suppliers are not good candidates for reverse auction. Items
in the nature of commodities, Commercially-off-the-shelf items, items
having large number of suppliers and high value procurements may be
more amenable to reverse auction;

   ii) It is feasible for the procuring entity to formulate a detailed description of
the subject matter of the procurement;

52 http://cvc.gov.in/ord46903.pdf
iii) There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;

iv) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms;

v) In cases where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.

4.16.1 Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely:

i) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and

ii) The invitation shall, in addition to the information as specified in e-procurement, include details relating to:

   a) Access to and registration for the auction;
   b) Opening and closing of the auction;
   c) Norms for conduct of the auction; and
   d) Any other information as may be relevant to the method of procurement.

(Rule 167 of GFR 2017)

4.17 One Stop Government e-Marketplace (GeM)

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

4.17.2 Ministry of Commerce has developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods and Services by Ministries or Departments is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017.

4.17.3 **Products and services are listed on GeM by various suppliers as on other e-Commerce portals:** The registration of suppliers on GeM is online and automatic based on PAN, MCA-21, Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

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

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

“**Government e-Market Place (GeM):** Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM
SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under:\footnote{Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.}

\begin{enumerate}
\item[i)] \textit{Up to \{Rs.25,000/-\}\footnote{In case of procurement of Automobiles only, the ceiling of direct purchase will be Rs. 30,00,000/- instead of Rs. 25,000/-; Refer DoE OM No. F.1/26/2018-PPD dated 09.08.2021.} through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 lakh instead of Rs. 25,000/-);\\
\item[ii)] Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.\\
\item[iii)] Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of 30 lakh will continue).\\
\item[iv)] The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.\\
\item[v)] The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.\\
\item[vi)] The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and\footnote{Notified vide OM No. F.1/26/2018-PPD dated 9th August, 2021.}\footnote{Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019.}
shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.

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

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

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

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

4.17.7 Payment Procedure in GeM: The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 23rd January, 202057 issued by D/o. Expenditure, M/o. Finance, New Delhi. The following procedures are prescribed for making payments to the Sellers/ Service Providers in GeM which shall be complied and adhered to by all concerned for different type of contracts such as:

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

i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of

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57Accessible from https://doe.gov.in/sites/default/files/Procedures%20for%20payments%20for%20Goods-Services%20to%20sellers%20service%20providers%20to%20Government%20e-Marketplace%208%20GeM%20-%20through%20PFMS%20and%20by%20non-PFMS%20Agencies-Entities%20%28NPAE%29_1.pdf
“Goods CRAC” (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply and Liquidated Damages etc. for delay in supply.

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

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

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

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

c. Third (and subsequent) milestones - Payment of Incidental Costs: 100% Payment related to Incidental costs at consignee site towards Incidental Services (such as providing training, or other work/ service as per scope defined in the contract), to be paid on submission of “Final CRAC” by the End User / Consignee. While creating the bid, Buyer shall have functionality to define the deliverables in this milestone. In exceptional cases, Buyer may choose to split this milestone as required.

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

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

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

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

c. Third (and subsequent) milestones - Incidental Services etc.: - days after installation and commissioning.
vi) The payments on GeM are primarily categorized under two heads i.e. through PFMS or GeM Pool Account. The detailed instructions for both type of payment system are as under:

A. Payments through PFMS:

1. The Central Government Buyer i.e. the concerned Programme Division or Administrative Unit in a Ministry/Department will place the Contract online after taking prior approval of the Competent Authority for procuring a particular Good or Service. Inter-alia, the Contract form will also contain the following fields including fields required for payment related processes:

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

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

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

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

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

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

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

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

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

3. The GeM portal will send the Sanction Order details to PFMS.
4. On issue of Sanction order and placing the Contract for goods, the full amount required from the relevant Budget Head should be blocked in the PFMS. In cases of Services, amount should be blocked for one payment cycle as defined in the contract. Before releasing payment for any cycle, the funds required for the next payment cycle should be blocked so as to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the financial year in question and it will not be withdrawn for any other purpose other than the one for which the amount is Blocked. In order to alleviate the operational issues as well as to ensure optimum utilization of available funds, the following additions\(^{58}\) are made in para 9.7.7 (vi) (A) (4)

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

b. Functionality to un-block the blocked funds in exceptional cases/ emergency cases with some validations: Head of Department (HoD) of the organization on GeM can unblock certain % of blocked funds of a contract (may be upto 100%) with the approval of associated finance of the Ministry/ Department or the CPSE in exceptional cases/ emergency cases after giving a clear undertaking that he will ensure timely

\(^{58}\) Notified vide OM No. F.6/18/2019.PPD issued by Department of Expenditure dated 29.12.2020
availability of funds and unblocking will not lead to delay payments to sellers. However, such unblocking will not allowed if the seller has already raised an invoice (before 1st March of Financial Year).

c. **Funds for the relevant financial year should be blocked only if the delivery period is such that the delivery is scheduled before the 1st of March of that financial year.** If the delivery is scheduled in March of that financial year or scheduled in the next financial year then fund blocking is optional for buyer in current financial year and mandatory only in the next financial year in the 1st week of April.

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

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

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

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

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

   a. On dispatch of Goods, the Seller would enter the Dispatch Details and date of Dispatch and will upload documentary evidence of Dispatch against each consignment on GeM Portal. All these documents and details shall be shown to the Consignee on his dashboard and shall also be notified to the consignee on his e-mail and on his registered mobile number.
b. The Seller shall prepare an electronic Invoice, digitally/e-signed, on GeM portal and shall submit the same on-line to the Buyer. GeM portal will send an SMS/email alert to the Buyer, on submission of Invoice. This Invoice will contain mode of dispatch of goods, dispatched/delivered quantity with date and all inclusive price claimed based on digitally/e-signed Contract. In case Services are procured, the required data as per Contract may be incorporated in the Invoice.

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

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

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

f. After expiry of 72 hrs. from the first alert, another alert will be flashed on the dashboard of the Consignee, Buyer including HoD and an email along with an SMS Alert to Consignee , Buyer, HoD informing that consignee has to mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM and if the time limit of 96 hrs expires from the date of delivery of goods/ milestone achievement/ service delivery as per entry made by Seller/ Service provider and if the consignee does not acknowledge receipt of stores/ milestone achievement/ service delivery by generating PRC or disputes the same by rejecting receipt, it would be presumed that goods have been delivered/milestone achievement I service delivery has been made to consignee and PRC will be auto generated by the system (Deemed PRC).

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

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

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

10. Consignee Receipt and Acceptance of Stores on GeM:

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

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

After verification including assessment of quality and quantity of goods/verification of completion of all deliverables defined in the milestone/completion of service for the defined period, the Consignee(s) will issue an on-line digitally/e-signed Consignee's Receipt & Acceptance Certificate (CRAC) (Goods CRAC/Service CRAC/ Delivery CRAC/ Installation CRAC/ Final CRAC as the case may be) (within 10 days (unless otherwise specified in a particular contract) of date of receipt indicated in PRC/deemed date of receipt as indicated in Deemed PRC. The CRAC would clearly indicate the Order quantity/milestone achievement/service delivery, rejected quantity/unacceptable milestone achievement/unacceptable service delivery (if any, with reasons for rejection including shortages/damaged/unaccepted quality), quantity/milestone achievement/service delivery accepted and cleared for payment.

However, if the consignee does not issue CRAC within 10 days (unless some other time line is specified in a particular contract for issue of CRAC), on 11th day from the date of receipt/deemed date of receipt of quantity/milestone achievement/service delivery as indicated in PRC, GeM System/Portal would auto generate unsigned CRAC which, backed with digitally/e-signed PRC or deemed PRC based on Seller Evidence for the corresponding quantity/milestone achievement/service delivery shall be taken as deemed acceptance for payments in lieu of the requirement of digitally/e-signed CRAC. This will be made available on GeM to the Buyer/Seller
and also the concerned DDO (if applicable) and PAO/Paying Authority. The GeM portal would generate a unique serial number for CRAC relating to concerned DDO (if applicable) & PAO/Paying Authority, so that the payments are made seriatim.

In case the CRAC is auto-generated, the consignee shall have the provision on GeM to cancel or amend the auto-generated CRAC within 72 hrs, if the goods have not been accepted or found defective/short received. In case nothing is corrected by consignee on the system, it will be presumed that the consignee has nothing to say and the auto-generated CRAC will be considered as final for all purposes including payments.

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

12. It is obligatory to make payments without any delay for purchases made on GeM. In no case should it take longer than the prescribed timelines. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued on-line and digitally/e-signed by consignee, will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned PAO for triggering payment through PFMS for crediting to the supplier's account. In case of return of Bills by PAO/Paying authority, the discrepancies should be addressed by concerned Buyer/DDO within one working day and thereafter on re-submission of Bill the PAO should also not take more than one (1) working day for triggering payment to the Seller/service provider Any matter needing a resolution will be escalated to the next higher level in each agency (Buyer, DDO and PAO) where the matter should be resolved within 24 hours. In the entire process, time taken for payment should not exceed ten (10) days including holidays.
Chapter 4: Modes of Procurement and Bidding Systems

13. After online pre-check of all relevant documents, PAO/Paying Authority shall debit the Government account, releasing the corresponding payment through PFMS to be credited into the bank account of the Seller/service Provider. The payment so released shall be credited to the Seller/Service Provider account within 24 hours (excluding public holidays), by the Bank. SMS alerts shall be sent to the Seller/Service Provider and Buyer after the payment is authorized by PAO and also after the confirmation of the payment by the Bank. The payment authorization as well as payment confirmation details shall be shared by PFMS on the GeM portal. The PAO/Paying Authority and DDO shall comply with the provisions of General Financial Rules for budget implementation.

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

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

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

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

18. The multi-year liabilities so created as referred to in Para 4.17.7 (vi) (A) (1) (h) above shall be reviewed regularly by the Programme Division/Administrative unit in consultation with the Financial Adviser. The consolidated information on the total committed liabilities, year-wise, shall be submitted by the Financial Adviser to the Budget Division, Department of Economic Affairs, Ministry of Finance for suitably
reflecting in the Budget Estimates for the relevant financial year and in the Medium Term Expenditure Framework (MTEF).

19. For all contracts placed through GeM, the payment through PFMS to all Sellers/ Service Providers must be released online only against electronic bill generated on GeM. No offline payment should be made in such cases to avoid double payment. Only in exceptional cases such as non-availability of the GeM platform or long shutdown of internet services at Buyer location or similar force majeure conditions, such off-line payments can be resorted to subject to the condition that immediately after resolution of the problem, necessary entries would be made on-line in GeM portal to obviate the possibility of double payment.

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

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

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

3. The following are the core elements of GPA that should be incorporated during the opening and operations/ procurement stages:
Chapter 4: Modes of Procurement and Bidding Systems

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

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

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

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

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

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

1. Order cancellation
2. Order rejection
3. Refund

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

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

5. After placement of contract on GeM, the process for PRC and CRAC will be same for NPAE category also as indicated in Para 4.17.7 (vi) (A) (9) above regarding Provisional Receipt of Stores on GeM and Para 4.17.7 (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.

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

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

8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC, the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the corresponding quantity/ milestone achievement/ service delivery deducted by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service
Chapter 4: Modes of Procurement and Bidding Systems

Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.

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

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

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

vii) In case any Non PFMS Agency/ Entity decides with the approval of their Competent Authority to have integration of their on-line payment Systems with functionality for Blocking of Funds etc. as per PFMS system of payments, the Payment procedures outlined for PFMS in Para 4.17.7 (vi) (A) shall be mutatis mutandis applicable to them.

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

4.17.8 It is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS)\textsuperscript{59} with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM (for example for procurement through Central Public Procurement Portal). The Past Transaction Summary will be provided, where available. “GeMAR&PTS” shall be a pre-requisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

4.17.9 Purchase of goods without quotation can be resorted for value upto Rs. 25,000/-only on each occasion may be made without inviting quotations or bids on

the basis of a certificate to be recorded by the competent authority, only when the required goods are not available on GeM.

4.17.10 In case a certain item is not available on the GeM portal,60 Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier and will jointly record a certificate before placement of the purchase order.

4.17.11 Where an item is available on GeM and Ministry/ Department/ Organization wants to buy outside the GeM in view of any compelling circumstances, the approval of Standing Committee of GeM (SCoGeM) and Secretary concerned shall be required.61

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Chapter 5: Preparing bid documents, publication, receipt and opening of bids

5.1 Preparation of Bid Documents

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

Bid documents should be based on SBDs relevant for the value range and the category of procurement. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD/ SRFPD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract (these variable sections may have different nomenclatures in some organisations). Department of Expenditure has issued Model Tender Documents for Procurement of Goods\textsuperscript{62} and Procurement of Non-Consultancy Services\textsuperscript{63} on 29\textsuperscript{th} October 2021.

In case of a limited tender, instead of a full set of SBD, only a machine numbered tender form (refer Annexure 5) 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 vendors, 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.

\textsuperscript{62} Accessible from https://doe.gov.in/sites/default/files/Model\%20Tender\%20Document\%20for\%20Procurement\%20of\%20Goods\%20\%20pdf\%29.pdf

\textsuperscript{63} Accessible from https://www.doe.gov.in/sites/default/files/Model-Tender-Document-for-Procurement-of-Non-Consultancy-Services.pdf

128
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.

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

i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery;

ii) Limitation or preference for participation by bidders in terms of the Government policies;

iii) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the supplier’s eligibility to receive such a Government contract. The qualification criteria should take care of the supplier’s past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on);

iv) There are no such qualifications for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods.

v) The procedure as well as date, time and place for obtaining, submitting and opening of the bids;

vi) Terms of delivery/completion;

vii) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which procuring entity will address the bidder’s questions; (Rule 173 (iv) of GFR 2017).

viii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the
bidding documents. SBDs should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered”;

ix) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; (Rule 173 (v) of GFR 2017) and

x) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws (Rule 173 (vi) of GFR 2017)

xi) **Tender Documents**:

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

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

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

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

e) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the
specific circumstances of the procurement. Appropriate parameters should be
prescribed in the eligibility criteria for bidders, to enable selection of the right type
of bidders in public interest, balancing considerations of quality, time and cost.
f) Open online tendering should be the default method to ensure efficiency of
procurement. Public authorities should also keep the experience criteria broad
based so that bidders with experience in similar nature of items/ goods can
participate.
g) Pre-bid conference may be conducted for large value tenders by Procuring
Entities. The Place and time of pre-bid conferences should be mentioned in the
tender document and/ or publicized through the website of the procuring entity
and/ or through newspaper publication.

5.1.2 Contents of Tender Documents (Rule 168 of GFR 2017)
The main sections of the SBD are:
   i) Notice Inviting Tender (NIT);
   ii) Instructions to Bidders (ITB);
   iii) Appendix to Instructions to Bidders (AlTB) (instead of modifying ITB, it is
        better to have information specific to a procurement as a separate section);
   iv) Eligibility and qualification criteria;
   v) Schedule of requirements
   vi) Technical specifications (including Drawings) and Quality Assurance
       (Inspections and Tests);
   vii) General Conditions of Contract (GCC);
   viii) Special Conditions of Contract (SCC) (instead of modifying GCC every time, it
        is better to have it as a separate section); and
   ix) Standard formats, including Bid Cover letter, price schedules, bank
guarantees and contract format.
A reading of the sections of the tender document will make the purpose and
instructions clear. However, some broad guidelines for preparing bid documents are
provided in the subsequent paragraphs.
5.1.3 Notice Inviting Tender

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

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

In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and Procuring Entity’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 Procuring Entity’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 Procuring Entity as per procedure.”

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

5.1.4 Information to Bidders (ITB) and AITB

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

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

i) **Purchase Preference Policies**

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

ii) **Clarification of Tender Documents**

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

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

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

iv) **Bid Validity**

2.3.1 A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 75 (seventy-five) days for OTE and 90 (ninety) days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

v) **Sealing and Marking of Tenders**

The tender document is to indicate the total number of tender sets (for example, in duplicate or in triplicate, and so on) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate," and so on, and also printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All the above instructions are to be suitably incorporated in the tender documents.

vi) **Withdrawal, Substitution and Modification of Tenders**

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

vii) **Eligibility/Evaluation/Qualification Criteria**

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

The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (*Rule 173 (i) of GFR 2017*). As per Department of Expenditure’s OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable only to all startups recognized by Department of Industry & Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

Prequalification/ Post Qualification (PQ) shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing. The quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied prequalification/post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

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

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

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

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

ix) **Conflict of Interest among Bidders/ Agents**

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

a) they have controlling partner(s) in common; or

b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or

c) they have the same legal representative/agent for purposes of this bid; or

d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or

e) Bidder participates in more than one bid in this bidding process.

Participation by a Bidder in more than one Bid will result in the
disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.

f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:

1. The principal manufacturer directly or through one Indian agent on his behalf; and

2. Indian/foreign agent on behalf of only one principal.

g) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;

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

x) **Schedule of Requirements**

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

xi) **Quotation Received from Dealers/Agents for Items not Manufactured by Them**

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64 CVC (CTE) No.12-02-6-CTE/SPI (1)-2, dated January 13, 2012 refers to this.
When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers’ confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

xii) Special Conditions in GTE Procurements

a) Currency of Bidding: In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI’s notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.

b) Agency Commission: The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the bid) between the bidder and the Indian Agent. The Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. The Purchaser or their authorized agencies and/or any other authority of the Government of India shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/suspended from having business dealings with the Purchaser, following laid down procedures for such banning/suspension of business dealings.
c) **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy\(^{65}\) of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/ FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/ Department may be obtained. However imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/ FAS (Free Alongside Ship) or CFR (Cost & Freight)/ CIF(Cost, Insurance & Freight) basis. All importing Government Departments/ PSUs are now allowed to make their own shipping arrangements with out needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and

d) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees five crore. Procuring Entities who are

entering into large number of imports contracts, may enter into annual
Insurance arrangements for all imports during the year with Insurance
Companies, instead of insurance for each individual imports
separately on the basis of “Open Cover (all Risk)”. Where delivery of
imported goods is required by the purchaser on Cost Insurance and
Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall
arrange and pay for marine/air insurance, making the purchaser the
beneficiary. Where delivery is on Free On Board/ Free Alongside Ship
(FOB/FAS) basis, marine/air insurance shall be the responsibility of
the purchaser.

5.1.5 General and Special Conditions of the Contract

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

5.1.6 Submission Formats

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

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

It is mandatory for all Ministries/Departments of the Central Government, their
attached and subordinate offices and autonomous/statutory bodies to publish their
tender enquiries, corrigenda thereon and details of bid awards on the Central Public
Procurement Portal (CPPP). These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party. These instructions would not apply to Purchase of goods without quotations or Purchase of goods by purchase committee.

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

5.2 Receipt and Custody of Tenders

5.2.1 Cost and Availability of Tender Documents

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

The tender document fee should be as low as possible considering the cost/effort of preparing documents. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders. The procuring Entity may decide not to take any charges for the tender documents, in view of prevalence of e-publishing/ downloading of tender documents. The cost of the tender document is to be submitted to the authority nominated therein by the prospective tenderer in the form of a demand draft /banker’s

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66Need for publishing of contract award for procurements made through DGS&D Rate Contracts or through any other Central Procurement Organizations (CPOs) stated under Rule 159 (iv) of GFR, 2017 has been deleted vide OM No.F.1/26/2018-PPD issued by Department of Expenditure dated 02.04.2019
cheque/pay order. Firms that are eligible for exemption from the tender document fee such as MSEs, Procuring Entity registered units (for relevant items and monetary limit) have to submit/upload scanned copy of documents in support of this exemption. Although the Procuring Entity is the best judge to decide or waive the document cost, following table could be used as a starting point:

<table>
<thead>
<tr>
<th>Estimated Value of Tender</th>
<th>Tender Document Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below Rs 25 Lakh</td>
<td>Rs. 500</td>
</tr>
<tr>
<td>Rs 25 Lakh to Rs 2 Crore</td>
<td>Rs. 1,500</td>
</tr>
<tr>
<td>Rs 2 Crore to Rs. 25 Crore</td>
<td>Rs. 2,500</td>
</tr>
<tr>
<td>Rs 25 Crore to Rs, 50 Crore</td>
<td>Rs. 5,000</td>
</tr>
<tr>
<td>Above Rs 50 Crore</td>
<td>To be decided on case to case basis</td>
</tr>
</tbody>
</table>

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

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

5.2.3 Extension of Tender Opening Date

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

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

5.2.4 Sealing, and Marking of Bids by Bidders

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc.) required to be submitted. In case of two envelop bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked these with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence “NOT TO BE OPENED” before......... (due date & time of tender opening) are also to be put on these envelopes and these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed in a similar manner. In case bids are asked in a number of copies, the tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", “duplicate” and so on and also marking these as mentioned above. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked etc. as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening etc.
Chapter 5: Preparing bid documents, publication, receipt and opening of bids

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

5.2.5 Submission, Receipt and Custody of Tenders

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

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

2) 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

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

5.2.6 Withdraw/ Amendments / Modifications to Bids by Bidders

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

5.3 Procedures to be followed during Bid Opening
Immediately after the deadline for bid submission, procuring entity shall proceed to
the bid opening. In e-procurement, bids are opened online as detailed in Appendix 3.
In offline tenders, the BOC shall comprise one officer each from the procuring entity
and Associated/ integrated Finance.

i) 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 bidding document. All bid-
opening activities should be carried out demonstrably before such a
gathering. The prescribed format for the bid opening attendance sheet and
report are given at Annexure 10;

ii) At a prescheduled date and time, the BOC of the day should get the particular
tender box opened, after ensuring and demonstrating that the seal on the box
has not been tampered with. All bids should be collected from the tender box.
Bids for tenders not opening on that day should be put back into the box and
the box resealed. Sometimes, there would be tenders dropped wrongly into
this tender box. Such wrongly dropped tenders with appropriate endorsement
should be put into the appropriate box or sent to the Tender Committee (TC)
concerned, if the date of opening is over. The bids for different tenders
opening on the day (including oversized bids, which were submitted to
designated officers) should be sorted, and a count for each tender should be
announced and recorded, particularly noting any modifying/altering/withdrawal
of bids. BOC should ensure and demonstrate that bid envelopes are duly
sealed and untampered. Late bids should be separately counted but kept
aside and not opened. In the case of an advertised tender enquiry or limited
tender enquiry, late bids (that is, bids received after the specified date and
time for receipt of bids) should not be considered (Rule 165 of GFR 2017);

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

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

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

vi) Proper sealing and codification need to be done on samples as well for samples which accompany the bid. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and

vii) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. 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.
### 5.4 Bidding Process - Risks and Mitigations

<table>
<thead>
<tr>
<th>Risk</th>
<th>Mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exceptions to an open bidding</strong> process are abused, leading to single source processes.</td>
<td>Rigorously follow the conditions under which open tendering can be dispensed with.</td>
</tr>
<tr>
<td><strong>When short lists are used</strong>, 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.</td>
<td><strong>Registration of bidders/contractors:</strong> All major procuring Departments must keep a list of registered bidders for use in restricted bidding. Publicise even restricted bids on your website. Bidders for LTE/ SLTE may be transparently selected with the approval of CA.</td>
</tr>
<tr>
<td><strong>Pre-qualification criteria:</strong> 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.</td>
<td><strong>Lay down</strong> criteria when two stage bidding is warranted. Also lay down model PQC criteria for different types of procurements.</td>
</tr>
<tr>
<td><strong>Invitation to tender</strong> (an open bid) is not well publicised or gives insufficient time, thereby restricting the number of bidders that participate.</td>
<td><strong>Publicity and adequate time for bid submission</strong> must be ensured. Require a higher level approval for short bid submission period.</td>
</tr>
<tr>
<td><strong>Evaluation criteria</strong> are not set from the beginning or are not objective or not clearly stated in the bid documents, thereby making them prone to being abused.</td>
<td><strong>Objective, relevant and clearly</strong> stated evaluation criteria must be specified in the bid document.</td>
</tr>
</tbody>
</table>
Chapter 6: Forms of Securities, Payment Terms and Price Variations

6.1 Forms of Security

6.1.1 Bid Security (Rule 170 of GFR 2017)

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 limited tender enquiry Bid Security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry of Department or Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT). The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two to five per cent of the estimated value of the goods to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents. The bid security may be obtained in the form of Insurance Surety Bonds, account payee demand draft, fixed deposit receipt, or banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser’s interest in all respects. 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, in case of GTE) issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on. The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period.

67 Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017
68 Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022
In exceptional cases, in place of a Bid security, Procuring Entities after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids/request for proposals document, they will be suspended for the period of time specified in the request for bids/request for proposals document from being eligible to submit Bids/Proposals for contracts with the procuring entity.

In appropriate cases, Submission of the bid security may be waived with the Competent Authority’s (CA’s) approval, especially in the case of indigenisation/development tenders, limited tenders and procurements directly from the manufacturer or authorised agents.

Tenderers that are currently registered will also continue to remain registered during the tender validity period with the Procuring Entity or MSEs (please refer to para 1.10.4 of Chapter 1) are exempt from payment of EMD. In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only.

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

Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.\(^6\)

\(^6\) Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022
6.1.2 **Performance Security (Rule 171 of GFR 2017)**

i) To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023. Refer to para 6.1.2 (iv) below]. Performance security may be furnished in the form of Insurance Surety Bond\(^70\), account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities\(^71\). Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto Rupees 1 (one) lakh.

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

iii) The performance security will be forfeited and credited to the procuring entity's account in the event of a breach of contract by the contractor. It

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\(^{70}\)Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

\(^{71}\) A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.
should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so make the process transparent and visible.

iv) On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender, or the Secretary of the Ministry/ Department, whichever is lower. Specific reasons justifying the exception shall be recorded\(^\text{72}\).

6.1.3 Warranty Bank Guarantee

In case of works and capital equipment, there is usually a defect liability/warranty clause against defects arising from design, material, workmanship or any omission on part of the vendor/ contractor during a specified period of months from the date of

\(^{72}\) Notified vide OM No.F.9/4/2020-PPD issued by Department of Expenditure dated 30.12.2021
commissioning or from the date of dispatch in case of goods – whichever is earlier. In such cases, the performance guarantee is to be valid upto 60 (sixty) days beyond the warranty period. It is normally permissible in such a situation to allow Performance guarantee to be valid upto 60 (sixty) days beyond delivery/commissioning period and the contractor may be allowed to submit a fresh Warranty Bank Guarantee of 10 (ten) per cent of the value of the goods in the currency of the contract valid upto 60 (sixty) days beyond the Warranty period. In such cases, the performance guarantee is to be returned only after satisfactory delivery/commissioning and receipt of such a warranty bank guarantee. In procurement of other than Capital Equipment Goods (and in case of low value Capital Goods – say upto Rupees one Lakh), Warranty Clause is not called for.

6.1.4 Verification of Bank Guarantees

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

i) BG shall be as per the prescribed formats

ii) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);

iii) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);

iv) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Procurement Entity on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;

v) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the
issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned procurement entity.

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.

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

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

6.2 Payment Clause

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

In case of indigenous goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable. In case of imported goods, in addition to similar elements of price as above (other than excise duty and
Chapter 6: Forms of Securities, Payment Terms and Price Variations

taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training, and so on.

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

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

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

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

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

a) 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 procuring entity must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.

c) Release of payment and settlement of the final bill should be processed through the Associated/ integrated Finance as per the terms and conditions of the contract;

d) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed;

iv) Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance;

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

6.3 Terms of Payment for Domestic Goods
Chapter 6: Forms of Securities, Payment Terms and Price Variations

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

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

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

i) For a contract with terms of delivery as FOR dispatching station -- 60 (sixty) per cent on proof of dispatch along with other specified documents, 30 (thirty) per cent on receipt of the goods at site by the consignee and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee; and

ii) For a contract with terms of delivery as FOR destination/delivery at site -- 90 (ninety) per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee.

Note: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are FOR destination/delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided ex-works or FOR dispatching station terms should be avoided.

6.3.1 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. In such of those cases where there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through LC, depending on the merits of the case, this may be agreed to. However procuring entities should switch over to more transparent electronic payment systems like Electronic Clearance System (ECS), Real-time gross settlement systems (RTGS) National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways.

6.3.2 Documents for Payment for Domestic Goods

i) Supplier’s Invoice indicating, *inter alia* description and specification of the goods, quantity, unit price, total value;

ii) Packing list;

iii) Insurance certificate;

iv) Railway receipt/consignment note;

v) Manufacturer’s guarantee certificate and in-house inspection certificate;

vi) Inspection certificate issued by purchaser’s inspector; and

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

6.4 Terms of Payment for Imported Goods

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

i) Cases where installation, erection and commissioning (if applicable) are not the responsibility of the supplier -- 100 (hundred) per cent net FOB/FAS/CFR/CIF/CIP price is to be paid against invoice, shipping documents, inspection certificate (where applicable), manufacturers’ test certificate, and so on;

ii) Cases where installation, erection and commissioning are the responsibility of the supplier -- 80 - 90 (eighty to ninety) per cent net FOB/FAS/CFR/CIF/CIP price will be paid against the invoice, inspection certificate (where applicable), shipping documents, and so on, and balance within 21-30 (twenty-one to
thirty) days of successful installation and commissioning at the consignee’s premises and acceptance by the consignee; and

iii) Payment of agency commission, if payable, against FOB/FAS/CFR/CIF/CIP contract – the entire 100 (hundred) per cent agency commission is generally paid (in non-convertible Indian Rupees on the basis of BC selling rate of exchange) after all other payments have been made to the supplier in terms of the contract.

6.4.2 **Modes of Payment for Imported Goods**

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

For imported goods, payment usually happens through the LC opened by the State Bank of India or any other scheduled/authorised bank as decided by the procuring entity. The amount of LC should be equal to the total payable amount, and be released as per the clauses mentioned above. Provisions of Uniform Customs and Practices for Documentary Credits\(^\text{73}\) should be adhered to while opening the LC for import into India. If the LC is not opened, payment can also be made to the seller through a direct bank transfer for which the buyer has to ensure that payment is released only after the receipt of prescribed documents.

6.4.3 **Documents for Payment for Imported Goods**

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

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\(^{73}\)The **Uniform Customs and Practice for Documentary Credits** is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce, the current version being the UCP600.
i) Supplier's original invoice giving full details of the goods including quantity, value, and so on;

ii) Packing list;

iii) Certificate of country of origin of the goods to be given by the seller or a recognised chamber of commerce or another agency designated by the local Government for this purpose;

iv) Certificate of pre-dispatch inspection by the purchaser's representative;

v) Manufacturer's test certificate and guarantee;

vi) Certificate of insurance;

vii) Bill of lading/airway bill/rail receipt or any other dispatch document, issued by a Government agency (like the Department of Posts) or an agency duly authorised by the concerned ministry/Department, indicating:

   a) Name of the vessel/carryer;

   b) Bill of lading/airway bill;

   c) Port of loading;

   d) Date of shipment;

   e) Port of discharge and expected date of arrival of goods; and

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

6.4.4 **Air Freight Charges**

Goods that are required to be airlifted are to be dispatched on a 'charge forward basis'. All air freight charges, which are shown on the relevant consignment note as chargeable to the consignee, are to be paid to the Airline in Rupees. Some organizations need to import sophisticated instruments, tools and kindred goods. These are usually small in size and very delicate/fragile in nature. Such goods, invariably, need to be airlifted. But, quite naturally, form a small part of the Air Cargo carried by an Aircraft. For such imports, procuring entities may engage Air Freight Consolidators who consolidate the small Air Cargos of different customers, to be airlifted from one Airport to another. Hiring of services of Airfreight Consolidators should be done in a transparent manner, following standard principles of Public Procurement.
6.4.5 **Letter of Credit**

Two banks are involved in payment to the supplier by LC: – the purchaser’s bank and supplier’s bank. The purchaser is to forward the request to its bank in the prescribed format as formulated by the Bank, along with all relevant details including an authenticated copy of the contract. Based on this, the purchaser’s bank opens the LC on behalf of the purchaser for transacting payment to the supplier through the supplier’s bank. Care should be taken to ensure that the payment terms and documents to be produced for receiving payments through LC are identical with those shown in the contract. Generally, the irrevocable LC is opened so that the supplier is fully assured of his payment on fulfilling his obligations in terms of the contract. In case the delivery date of the contract is extended to take care of delay in supply, for which the supplier is responsible, the tenure of the LC is also to be extended, but the expense incurred for such an extension (of LC) is to be borne by the supplier. Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600)\textsuperscript{74} should be adhered to while opening the LC for import into India.

6.5 **Advance Payment**

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

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

ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;

Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordinance factories:

a) 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

\textsuperscript{74} The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP) is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce – the current version being the UCP600.
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 Administrative Department may relax the ceilings mentioned above with prior concurrence of the Associated/ integrated Finance. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms and ammunitions from ordinance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case to case basis.

6.5.2 Documents for Advance Payments

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

6.5.3 Insurance

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

(Rule 172 of GFR 2017)

6.6 Firm Price vis-à-vis Variable Price
Chapter 6: Forms of Securities, Payment Terms and Price Variations

Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the PVC may be stipulated for items with inputs (raw material, labour, etc.), prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. For high value (more than Rupees three crore) tenders with deliveries longer than 18 (eighteen) months, PVC may be provided to protect the purchaser’s interests also.

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

The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange / any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.

The following are important elements of PVC:

i) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. The raw materials used in manufacture are procured some weeks before the goods’ submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;

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

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

iv) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;

v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;

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

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

viii) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;

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

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

xi) An illustrative PVC clause is available in Annexure 15.
xii) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”

xiii) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.7 Exchange Rate Variation

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

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders (the purchase organisation is to decide and adopt a suitable date). The variation may be allowed between the above base date and
date of remittance to the foreign principal/mid-point of manufacture of the foreign component (the purchase organization is to choose the appropriate date). The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus ______per cent (the purchase organisation is to decide the limit, say plus/ minus band of 2.5% (Two point Five percent)).

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

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

6.8 Taxes, Duties and Levies
6.8.1 Statutory Duties and Taxes on Domestic Goods

The duties and taxes including excise duty and VAT levied by the Government on domestic goods vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (procuring entity) as per the section 64A of the Sales of Goods Act, 1930. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date 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 so that both the supplier and purchaser are equally
compensated for rise or fall in the price of the goods on account of such statutory variations.

(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.)

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations thereon should be entertained after opening of tenders and during the currency of the resultant contract. If a tenderer chooses to quote price inclusive of excise duty/ Sales Tax/ VAT, it should be presumed that the duties/ taxes so included is firm unless he has clearly indicated the rate of duties/ taxes included in his price and also sought adjustment on account of statutory variation thereon. If a tenderer is exempted from payment of excise duty upto a certain value of turnover, he should clearly state that no excise duty will be charged by him upto the limit of exemption enjoyed by him. If any concession is available in regard to rate/quantum of Central Excise Duty, it should be brought out clearly. It should also be clearly indicated whether increase in rate of excise duty due to increase in turn over will be borne by the tenderer. Stipulation like, “excise duty is presently not applicable but the same will be charged if it becomes leviable later on”, should not be accepted unless in such cases it is clearly stated by the tenderer that excise duty will not be charged by him even if the same becomes applicable later on due to increase in turnover. If a tenderer fails to comply with this requirement, his quoted price shall be loaded with the quantum of maximum excise duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers. The tenderers should indicate in their offer whether they are availing VAT/ Tax credits or not. If they are availing VAT/ Tax credits, they should take into account the entire credit on inputs available under such Schemes while quoting the price and furnish a declaration to this effect along with a confirmation that any further benefit available in future on account of such schemes would be passed on to the purchaser.
Manual for Procurement of Goods

Note: Sales tax/ VAT are not levied on transactions of sale in the course of import. Categories of cases constituting sale in course of import are:

i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale;

ii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

6.8.2 Octroi and Local Taxes

In case the goods supplied against contracts placed by Procuring Entity are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the supplier should obtain the exemption certificate from the Purchasing Department to avoid payment of such levies and taxes.

In case such payments are not exempted (or are demanded in spite of the exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt to the Purchasing Department for reimbursement and for further necessary action.

6.8.3 Customs Duty on Imported Goods

On imported goods, the tenderers shall also specify separately the total amount of custom duty included in the quoted price. The tenderers should also indicate correctly the rate of custom duty applicable for the goods in question and the corresponding Indian customs tariff number. Where customs duty is payable, the contract should clearly stipulate the quantum of duty payable, and so on, in unambiguous terms. The standard clauses to be utilised for this purpose are to be incorporated in the tender enquiry documents. Any import of materials directly from the supplier or manufacturer should be in the name of Procuring Entity. In this regard, all formalities will be completed by Procuring Entity engaging a Custom House Agent (CHA) and payment in this regard will be borne by Procuring Entity.

The Government has allowed exemption from payment of customs duty on certain types of goods for use by the following organisations:

i) Scientific and technical instruments imported by research institutes;

ii) Hospital equipment imported by Government hospitals; and
iii) Consumable goods imported by a public-funded research institution or a university.

However, to avail of such exemptions, the organisations are required to produce a "Custom Duty Exemption" certificate and "Not Manufactured in India" certificate at the appropriate time.

The relevant contemporary instructions covering these aspects should be incorporated in the tender enquiry document and in the resultant contract.

6.8.4 Duties/Taxes on Raw Materials

Procuring Entity is not liable for any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) in excise duty, custom duty, sales tax, and so on, 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 specifically agreed to in terms of the contract. A clause to this effect should also form part of the tender documents

6.9 Incoterm Terms of Delivery

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<thead>
<tr>
<th>Table 1: Incoterms and their applications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INCOTERMS Options</strong></td>
</tr>
<tr>
<td>Ex-Group of Terms</td>
</tr>
<tr>
<td>EXW – Ex-Works</td>
</tr>
<tr>
<td>Free Group of Terms</td>
</tr>
<tr>
<td>FCA – Free Carrier</td>
</tr>
<tr>
<td>FAS – Free Alongside Ship</td>
</tr>
<tr>
<td>FOB – Free On Board</td>
</tr>
<tr>
<td>C Group of Terms</td>
</tr>
<tr>
<td>CPT – Carriage Paid To</td>
</tr>
<tr>
<td>CIP – Carriage and Insurance Paid to</td>
</tr>
<tr>
<td>CFR – Cost and Freight</td>
</tr>
<tr>
<td>CIF – Cost, Insurance and Freight</td>
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<tr>
<td>Delivered Group of Terms</td>
</tr>
</tbody>
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Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the ‘title of goods’ at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (F.O.R., C.F.R., among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

i) Control and care of the goods while in transit;

ii) Carrier selection, transfers and related issues;

iii) Costs of freight, insurance, taxes, duties and forwarding fees; and

iv) Documentation, problem resolution and other related issues.

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

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

Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is
Chapter 6: Forms of Securities, Payment Terms and Price Variations

responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

6.10 e-Payment

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

6.11 Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers

This will be done as per the existing law in force during the currency of the contract.

6.12 Recovery of Public Money from Supplier's Bill

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

6.13 Refund from Supplier

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

6.14 Payment against Time Barred Claims
Ordinarily, all claims against the Government are time barred after a period of three years calculated from the date when the payment falls due unless the payment claim has been under correspondence. However, the limitation is saved if there is an admission of liability to pay, and fresh period of limitation starts from the time such admission is made. The drill to be followed while dealing with time barred claims will be decided by the ministry/Department concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.
Chapter 7: Evaluation of Bids and Award of Contract

7.1 Tender Evaluation

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

7.1.2 Schedule of Procurement Powers (SoPP)

There are delegations upto a threshold value 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 TC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is by Tender Committee consisting of three or more officers, however no member of the Committee should be reporting directly to any other member of such Committee. Procuring Entity should lay down a Schedule of Procurement Powers (SoPP) detail such thresholds. It can also lay down the powers jurisdiction and composition of different levels of Tender Committee and corresponding Accepting Authority for different categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure 2B/2C, however exact values of threshold would have to be decided by Procuring Entity themselves. Competent authority, in direct acceptance case; and member secretary of the Tender Committee will receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.

7.2 Preparation and Vetting of Comparative Statement

Except in cases upto Rs 25 Lakh (Rupees Twenty Five Lakh) the Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information.

7.3 Preliminary Examination
7.3.1 **Unresponsive Tenders**

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

i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;

ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;

iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered MSE unit but the tenderer is a, say, a large scale unit);

iv) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;

v) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or

vi) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

7.3.2 **Non-conformities between Figures and Words**

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:
i) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;

ii) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and

iii) If there is a discrepancy between words and figures, the amount in words shall prevail.

iv) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

7.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender
Discrepancies can also be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents (if any, refer Para 5.2.1 Cost and Availability of Tender Documents), Bid Security and statutory certificates if any) should be asked for in e-Procurement

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

7.3.5 Clarification of Bids/Shortfall Documents
During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/ VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

7.4 Evaluation of Responsive Bids and Decision on Award of Contract
All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of single stage single envelop bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and
evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ Eol stage would have already been evaluated as detailed in Chapter 4 and this second stage is for evaluation of responses to the Second Stage multiple envelopes from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

7.4.1 Evaluation of Techno-commercial Bid

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

i) Evaluation of eligibility/ qualification Criteria: Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer’s financial, technical and production capabilities for satisfying all of Procuring Entity’s requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/his tender as well as such other allied information as deemed appropriate by Procuring Entity.

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

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

iv) Considering Minor Deviations: Court has consistently taken a view that procuring entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:

    a) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;

    b) Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity’s rights or the tenderer’s obligations under the contract; or

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

v) Declaration of Successful Bidders: If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 11) to declare successful bidders. In such cases, after the approval of CA, the
results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelop/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

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

7.4.3 Evaluation of Financial Bids and Ranking of Tenders in general:

i) If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;

ii) Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;

iii) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the procuring entity also gives special importance to factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to
be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;

iv) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity’s pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore it should normally be on the basis of CIF/ FOR destination basis, duly delivered, commissioned, as the case may be:

v) In the case of goods manufactured in India or goods of foreign origin already located in India, VAT/sales tax and excise duty and other similar taxes and duties, which will be contractually payable (to the tenderer) on the goods are to be added;

vi) In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added;

vii) As per policies of the Government from time to time, the purchaser reserves his option to give price/purchase preferences as indicated in the tender document;

viii) In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the
successful tenderer for each schedule, subject to that tenderer(s) being responsive; and

ix) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

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

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

ii) **Currency of Payment**
   The contract price will be normally paid in the currency/currencies in which the price is stated in the contract.

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

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

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

7.5 Deliberations by the Tender Committee for Award of Contract.

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

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in Table 2 is a guideline for finalising contracts against various modes of procurements.

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>Mode of Procurement</th>
<th>Indigenous</th>
<th>Imported</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Open tender/ (e-tendering)</td>
<td>45 days</td>
<td>60 days</td>
</tr>
<tr>
<td>2</td>
<td>Procurement through registered vendors/ (Special) limited tenders</td>
<td>30 days</td>
<td>45 days</td>
</tr>
<tr>
<td>3</td>
<td>Proprietary basis/nomination basis</td>
<td>21 days</td>
<td>30 days</td>
</tr>
</tbody>
</table>
This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Government, guidelines, and so on.

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

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

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

7.5.4 Option clause
In case of long running, yearly procurements, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause[normally 25 (twenty-five) per cent] is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the
tenderers. Higher the option limit more is the uncertainty for the tenderers in formulating their prices and more is the chance of loading on the prices quoted to take care of such uncertainties.

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

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

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

i) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and

ii) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.
7.5.6 **Reasonableness of Prices**

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

[For more details on judging reasonableness of prices, please see para 2.1.1 (iii)(e) in Chapter 2 above].

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

i) The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;

ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;

iii) Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;

iv) Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;

v) In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;

vi) It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and

vii) Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

185
7.5.7 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

In the case of predatory pricing as well, procuring entities may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders.\textsuperscript{75}

No provisions should be kept in the Bid 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 Secretary of the Ministry/ Department, whichever is lower.\textsuperscript{76}

7.5.8 Cartel Formation/Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "Appreciable Adverse Effect on Competition" (AAEC) have been declared as an

\textsuperscript{75}In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020

\textsuperscript{76}Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020
offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

7.5.9 **Negotiations (Rule 173 (xiv) of GFR 2017)**

i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is technocommercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool 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. The circumstances where negotiations may be considered could be:

a) Where the procurement is done on nomination basis;

b) Procurement is from single or limited sources;

c) Procurements where there is suspicion of cartel formation which should be recorded; and

d) 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 requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

ii) 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 TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.

iii) 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, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.

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

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

b) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, 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 12; and

d) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its
revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

7.5.10 Consideration of Lack of Competition in OTE/ GTE and LTE [Rule 173 (xix) and (xxi) of GFR 2017]

Sometimes, against advertised/limited tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a ‘safe’ course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid77. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.

ii) The qualification criteria were not unduly restrictive; and

iii) Prices are reasonable in comparison to market values

However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.

Unsolicited offers against LTEs should be ignored, however Ministries/Departments should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:

77As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021
a) Inadequate Competition
b) Non-availability of suitable quotations from registered vendors
c) Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

7.5.11 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender
[Rule 173 (xix) of GFR 2017]
i) The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:

a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
c) none of the technical Proposals meets the minimum technical qualifying score;
d) If effective competition is lacking. However lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
e) the Bids'/Proposals’ prices are substantially higher than the updated cost estimate or available budget;
f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or
otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case.\textsuperscript{78}

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

7.5.12 Handling Dissent among Tender Committee

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

All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority’s views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority’s views.

\textsuperscript{78} Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022
Chapter 7: Evaluation of Bids and Award of Contract

However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

7.5.13 Independence, Impartiality, Confidentiality and ‘No Conflict of Interest’ at all Stages of Evaluation of Bids

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, “I declare that I have no conflict of interest with any of the bidder in this tender”. TC members may make such a declaration at the end of their reports.

7.5.14 Tender Committee Recommendations/Report

The TC has to make formal recommendations (Annexure 11) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the TC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

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.

After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued.

7.6 Award of Contract

7.6.1 LoA to Successful Bidder

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

In respect of contracts for purchases valued Rupees two and a half lakh and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.

7.6.2 Publication of Tender Results and Return of EMD of Unsuccessful Bidders [Rule 173 (xviii) of GFR 2017]

The details of award of contract and name of the successful tenderer should be mentioned mandatorily on the CPPP and also in the notice board/bulletin/website of the concerned Ministry or Department/e-Procurement Portal. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of
the Department with the concurrence if associated Finance. 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. In cases, where PSUs compete with private firms in public tenders, publication of details of contracts awarded by the PSU concerned to various sub-vendors, suppliers, technology providers and other associates before firming up their offer, may hurt the interest of the PSU as the competitors may get to know the details of sub-vendors, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

7.6.3  

**Bidder’s right to question rejection at this stage**

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

i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder registration or bidding, as the case may be, can make such representation

ii) 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;

iii) 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

iv) Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:
Manual for Procurement of Goods

a) Determination of the need for procurement;
b) Selection of the mode of procurement or bidding system;
c) Choice of selection procedure;
d) Provisions limiting participation of bidders in the procurement process;
e) The decision to enter into negotiations with the L1 bidder;
f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor; and
h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

7.6.4 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 by the specified date; failing this necessary action including forfeiture of EMD will be taken against the supplier.

7.6.5 Acknowledgement of Contract by Successful Bidder and Execution
After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties.

The supplier should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rupees two and a half Lakh or when the bidders offer has been accepted in entirety, without any modifications. While acknowledging the contract, the supplier may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be looked into for necessary action and, thereafter, the supplier’s unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the supplier) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required. 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 (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India. The words “for and on behalf of the President of India” should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR. No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state Government.

7.6.6 Framing of Contract

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

i) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Associated/ integrated Finance.

ii) All contracts shall contain a provision for

a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;

b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/services;

iii) All contracts for supply of goods should reserve the right of the Government to reject goods which do not conform to the specifications;
iv) Payment of all applicable taxes by the contractor or supplier; and

v) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Government at any time on the expiry of six months’ notice to that effect.

vi) Standard forms of contracts should be invariably adopted, except in 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 CAs is to be obtained; and

   c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (Rupees twenty-five) lakh and above, and of all rate and running contracts entered into by civil Departments of the Government should be sent to the Accountant General.

7.6.7 Procurement Records

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

| 7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations |
|-------------------------|-------------------------|
| **Risk**                | **Mitigation**          |
| **Evaluation of bids**  | TC should give an undertaking at the appropriate time that none of the members has any personal interest in the companies/agencies participating in the tender process. Any member having an interest in any company should refrain from participating in the TC. Some members of a TC 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 TC. |
| leaves room for manipulation and biased assessments. Some TC members may not be independent or neutral or may have conflict of interest. | |
| **Discriminating against a Best Value Bid:** In case a bidder’s bid (not in the good books of the procuring entity) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid: | Mitigation for each type of risk is mentioned below. |
| **Unwarranted rebidding:** Rejecting all bids and calling for rebidding on the pretext of prices being high, change of specifications, budget not being available, and so on. | In case a procurement is rebid more than once, approval of one level above the CA may be taken. Please also see the complaint mechanism. |
| **Sudden quantity reduction/increase or splitting of quantity work at the time of award:** Many organisations have provisions for change/ splitting in the bid quantity at the time of award. Some organisations vary quantity even without such provisions | Bid conditions must specify a limit beyond which originally announced quantity/scope cannot be reduced/increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the bid documents beforehand. |
| **Unwarranted negotiations:** negotiations are called without justification. Sometimes a counter-offer is made to discourage lowest acceptable bidder. | Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be re-tendering. |
| **Unwarranted delays in finalizing or varying the terms of preannounce** | A target timeline of finalisation of procurement should be laid down. |
### 7.6.8 Evaluation of Bids and Award of Contract - Risks and Mitigations

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<th><strong>Risk</strong></th>
<th><strong>Mitigation</strong></th>
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<td><strong>contract agreement:</strong> even after the TC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.</td>
<td>Delays and reasons thereof should be brought out before the CA on the file at the time of TC’s acceptance or contract signing. The contract should be strictly as per the bid conditions and accepted offer.</td>
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**Anti-competitive practices:** Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the buyer’s attempts to get VfM in a bidding 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 the quote same or similar rates that are much higher than the reasonable price to force the buyer to settle the procurement at exorbitant prices.

**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.

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 8: Rate Contract and other Procurements with special features

8.1 Rate Contracts

8.1.1 Definition: A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 (fifteen) days time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract.

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

i) **Benefit to Users**
   a) Competitive and economical price due to aggregation of demands.
   b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement.
   c) Availability of quality goods with full quality assurance back-up.
   d) Enables procurement as and when required and thus reduces inventory carrying cost.
   e) Advantageous even to small users and those located in remote areas.
   f) Provides one single point of contact to procure such items.

ii) **Benefit to Suppliers**:
   a) Reduces marketing cost and efforts.
b) Eliminates repetitive tendering and follow-up actions with multiple authorities.
c) Provides single point contact for Govt. supplies.
d) Aggregation of Govt. demand leads to economic production.
e) Lends credibility.
f) Promotes quality discipline.

8.1.3 Deleted

8.1.4 Deleted

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

8.1.8 Deleted

8.1.9 **Special Conditions applicable for Rate Contract:** Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:

i) In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment.

ii) The purchaser reserves the right to conclude one or more than one rate contract for the same item.

iii) The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.

iv) The purchaser has the option to renegotiate the price with the rate contract holders.

v) In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
vii) The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.

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

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

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

8.1.12 Deleted

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

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

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

1. Export/Deemed Export by the supplier;
2. Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
3. Sale of goods such as drugs, which have expiry date;
iv) Sale of goods or services at lower price on or after the date of completion of sale/placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.

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

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

8.1.17 Deleted

8.2 Handling Procurement in urgencies/ Emergencies and Disaster Management

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

i) Direct Procurement Without Quotation

ii) Direct Procurement by Purchase Committee

iii) SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids
Manual for Procurement of Goods

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

8.3 Buy Back Offer

When it is decided to replace an existing old item(s) with a new/better version, the Department may trade the existing old item while purchasing the new one by issuing suitable bidding documents for this purpose. The condition of the old item, its location and the mode of its handing over to the successful bidder are also to be incorporated in the bidding document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with rebate for the old item and also, without any rebate (in case they do not want to lift the old item). This will enable the Department either to trade or not to trade the old item while purchasing the new one.(Rule 176 of GFR 2017)

8.4 Capital Goods/ Equipment (Machinery and Plant – M&P)

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

i) Since the cost is generally high, there are detailed procedures for approval of technical, administrative and budgetary provisions – before an indent is generated. Unlike consumable items (which are procured if a non-specific budgetary provision is there), Capital Goods are procured after an item specific Budgetary provision is included in the budget. Thus the acquisition of Capital Goods is also an Investment decision and may require some form of Investment Justification. Some of the higher value Capital Goods may be accounted in the Capital Block of the Organization. However these features may not apply to Capital goods procurement of smaller threshold values;

ii) There are also alternative to outright purchasing/ owning such equipment like hiring/ hire-purchase/ leasing or acquiring the functionality as a service;

iii) The procurement involves elements of Works and Services like Installation, Commissioning, Training, prolonged trials, Warranty, After Sales Services like post-warranty Maintenance and assured availability of spares. All such
elements have costs may be quoted explicitly or implicitly. A suitable warranty clause should indicate the period of warranty and service levels as well as penalties for delays in restoration of defects. Clauses for including essential initial spares for two years’ maintenance to be supplied along with equipment may be provided. If necessary appropriate number of years’ (say three to five or more years depending on the lifespan of the equipment) AMC may be included in the procurement detailing its conditions;

iv) The cost of operations, maintenance and disposal of the equipment over its life cycle may far outweigh the initial procurement cost over the life cycle of the capital equipment. Hence value for money becomes an important consideration – which can be addressed in Public Procurement by way of appropriate Description, specification, Contract conditions like inclusion of cost of supply of initial essential spares and total present value (as per DCF technique) of Annual Maintenance Contracts (AMC) for specified number of years within the estimated cost and also the evaluation criteria of procurement contract;

v) In case the Plant and Equipment consists of a number of machines which work in tandem or if it includes services/ works to be done by third party, an all encompassing Turnkey contract may be better alternative;

vi) Because of complexity of specification evaluation of Technical suitability of offers in procurement of Capital Goods involves complex issues about acceptance of alternatives, deviations and compliance with various particulars of specification. Acceptance or otherwise of alternatives should be made explicit. A statement of deviation including detailed justification for the deviations from each clause of specification should be asked for from the bidder in the Bid documents. A schedule of Guaranteed Particulars of specification indicating the values of each parameter may be included in the Specification, where the bidder can quote the offered value of the Parameters. In complex cases Pre-bid conference may help in reducing disputes and complexity at the time of evaluation;

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

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

8.6 Annual Maintenance Contract (AMC)

i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, the purchase organisation may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier.

ii) The maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods in question. The purchase organisation should decide this aspect on case to case basis on merit.

iii) If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower
quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to maintenance in future years are to be discounted (as per DCF technique) to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.

iv) However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.

v) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis.

vi) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties
(liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations.

vii) It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the procuring entity, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period.

viii) A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill.

ix) If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from two and a half to five per cent of the value of the equipment to be maintained.

x) Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rupees One Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the purchaser’s interest.

xi) Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be
maintained, a suitable notice period (say one to three months) for such
cancellation to come into effect is to be provided in the documents. A model
clause to this effect is provided below:

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

(Rule 169 of GFR 2017)
Chapter 9: Contract Management

9.1 Contract Management

9.1.1 The Purpose of Contract Management

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

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

9.1.2 Costs of delay in Contract Management Decisions: Delays

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

9.2 Amendment to the Contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/inescapable, any modification will be carried out with the prior approval of the CA with the Associated/integrated Finance’s concurrence.

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

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

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

Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry. No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

9.3 Operation of Option Clause

9.3.1 Option Clause
Manual for Procurement of Goods

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

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

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

9.3.2 Conditions Governing Operation of Option Clause

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

i) In case of decrease in the ordered quantity, it would be fair to allow the firm to supply work-in-progress or goods already put up for inspection;

ii) There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been opened since the time offers have been received at lower rates – even if not finalised;

iii) If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option

213
clause must be positively taken into account. The contract management authority must also keep a watch on delivery against contract, if other conditions are satisfied, the option clause must be exercised;

iv) The option clause is normally exercised after receipt of 50 (fifty) per cent quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;

v) The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;

vi) The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of CA in the original tender;

vii) There should be no option clause in development orders;

viii) This provision can also be exercised in case of PAC/single supplier OEM cases; and

ix) However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

9.4 Safeguards for Handing over Procuring Entity Materials/Equipment to Contractors

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

9.5 Payments to the Contractor and Handling of Securities

9.5.1 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.

9.5.2 Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard. Before making a final payment or before releasing the performance bank guarantee, a ‘No Claim Certificate’ (Annexure 21) 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.

9.5.3 Delay in payment to the contractors: Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.

In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers. There should have a system to monitor delays in payments and to identify such unwarranted delays including an
online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors' bills to be entered into the system with date of submission and date of payment.

9.6 Monitoring of Supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register (Annexure 17) recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

9.7 Delays in Performance of Contract

9.7.1 Delivery Period

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

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in