KAMARAJAR PORT LIMITED

(A MINI RATNA Govt. of India Undertaking)

MANUAL FOR PROCUREMENT OF

GOODS



MAY 2025

KAMARAJAR PORT LIMITED

PROCUREMENT OF GOODS MANUAL

MAY 2025

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FOREWORD

1. Ports spend sizeable amounts of their budgets on Works, Consultancy services/Non-consultancy services and procurement of Goods to create Assets and to maintain them. Ports have been delegated powers to make their own arrangements for procurement of Goods/services that are not available in GeM.

2. To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of Suppliers/Consultants/Service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement which provide framework for the public procurement system.

3. The Manual for Procurement of Goods was first published in 2017/2019 by Ministry of Finance – Department of Expenditure and the updated guidelines are issued in June 2022. The Manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ PSUs/ Autonomous Bodies. All the procurement related instructions issued by the Government have been subsumed into the manual and DoE has issued the Second Edition of the Manual for procurement of Goods.

4. In this context, the Manual (Second Edition of 2024) has been comprehensively revised. It focuses on ease of business for suppliers and clarity for the procurement professionals. A wide range of topics have been rewritten such as clarifying extent of applicability to various entities, categorisation of procurements, conflict of interest, interest-free advance payments, new forms of performance securities, outsourcing procurement, auto-extension of bids, capping price variation and liquidated damages, mitigating cartel formation, reverse auction, rate contracts, withdrawal by L1 bidders, Net Present Value (NPV), Procurement during Natural Disasters and many others.

5. In case of any provisions of this Manual have ambiguity or conflict with the provisions of any act, Rules, Policies, guidelines, Govt. Instructions, CVC advices, GFR etc. the guidelines issued by the later shall prevail. The Port's department shall review such clauses as and when required.

6. Any relaxation in the guidelines shall require the approval of the Competent Authority.

May 2025

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Preface

1. The Manual for Procurement of Goods (Second Edition-2024) issued by DoE is customized keeping in view the procedures followed by KPL and the flow of process of procurement. Chapterisation is done based on the steps involved in the procurement of Goods for easy reference. As far as possible, all the relevant procedures have been included. In case of any doubt / clarification, DoE Manual for Procurement of Goods need to be referred.

2. **Compliance:** The DoE Manual for Procurement of Goods (Second edition-2024) adheres to the relevant laws, GFR, and clarifications/ OMs issued by the Procurement Policy Division, Department of Expenditure, Ministry of Finance ('the Ministry') up to June 2024. In case of inconsistencies between the said Manual and prevailing law or GFR, the extant law and GFR shall prevail. However, the provisions of the Manual shall prevail in case of discrepancies with the clarifications/ OMs issued till June 2024 by the Ministry. Port officials are advised to stay informed about any further changes in the relevant law, GFR, and clarifications/ OMs from the Ministry.

3. **Interpretation**:
   a) Any mention of writing or written includes matter in digital communications (including email), manuscript, typewritten, lithographed, cyclostyled, photographed, or printed - under or over signature or seal or digitally acceptable authentication, as the case may be.
   b) Words in the singular include the plural and vice-versa. Words importing the masculine gender shall be taken to include other genders. Words importing persons include any company or any association/ body of individuals/ companies and vice-versa.
   c) Any reference to any legal Act, Government Policies or orders shall be deemed to include all amendments to such instruments, from time to time, till date.
   d) Sentences containing 'may' are to be considered desirable or good practices which procuring entities are encouraged to implement.
   e) Sentences containing 'should'/ 'shall' are required to be followed.
   f) Sentences containing "allowed" indicate an optional course of action to be decided upon on merits.

4. **Manuals and Model Tender Documents:** Model Tender Documents (MTD) for Procurement of Goods, and Non-consultancy Services were issued in 2019 and that of Consultancy Services was issued in 2023. These complement the respective procurement manuals since the MTDs contain additional details on many topics that the Manuals cannot accommodate. Therefore, Procuring Officials are urged to read both Manuals and MTDs in tandem for better understanding.

5. **Annexures:** Voluminous details from various orders/websites are relegated to annexures by DoE to maintain an uninterrupted flow of text on a topic. Since these orders/websites undergo frequent revision, it would be easier to update the annexures than the body of the manual.

   The Annexures in the DoE manual are to some extent customized to suit the requirement of KPL. Port officers may alter/update the annexures from time to time to suit their requirements of tender.

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Abbreviations and Acronyms

The following acronyms are used throughout this Manual:

(The main acronym is listed first, and alternatives are listed in bracket thereafter. Alternative meanings in certain contexts, if any, are listed in the brackets, after main meaning. Acronyms within brackets is not considered for sort order).

AITB	-	Additional Instructions to Bidders
AMC	-	Annual Maintenance Contract
BG	-	Bank Guarantee
BIS	-	Bureau of Indian Standards
BOC /TOC	-	Bid/Tender Opening Committee
BOQ	-	"Bill of Quantities" (refers to the Price Schedule in Excel sheet)
BSD	-	Bid Securing Declaration (in place of Bid Security, if permitted)
BSTC	-	Buyer Specific Terms & Conditions
BSV	-	Balance Sale Value
CA	-	Competent Authority
CFA	-	Competent Financial Authority
CAG (C&AG)	-	Comptroller and Auditor General of India
CBI	-	Central Bureau of Investigation
CCI	-	Competition Commission of India
CEO	-	Chief Executive Officer
CFR	-	Cost and Freight
CIF	-	Cost Insurance and Freight
CIP	-	Carriage and Insurance Paid
CIPP	-	Code of Integrity for Public Procurement
CMC	-	Comprehensive Maintenance Contract/ Contract Management Committee
CMD	-	Chairman and Managing Director
MD	-	Managing Director)
COI	-	Conflict of Interest

COTS	-	Commercially Off The Shelf - Goods
CPCB	-	Central Pollution Control Board
CPPP	-	Central Public Procurement Portal
CPSE	-	Central Public Sector Enterprise
CPT	-	Carriage Paid To - named place of delivery (earlier C&F – cost and freight)
CRAC	-	Consignee Receipt and Acceptance Certificate
CVC	-	Central Vigilance Commission
CVO	-	Chief Vigilance Officer
DAP	-	Delivered at Place - named place of delivery (earlier DAT – Delivered at Terminal)
DDO	-	Direct Demanding Officer (for RCs)
DDP	-	Delivered Duty Paid - named place of delivery
DFPR	-	Delegation of Financial Power
DMI&SP	-	Domestically Manufactured Iron & Steel Products Policy, 2019
DoE	-	Department of Expenditure – under the Ministry of Finance
DP	-	Delivery Period
DPIIT	-	Department for Promotion of Industry and Internal Trade
DSC	-	Digital Signature Certificate
eASP	-	E-Auction Service Provider
e-BG	-	Electronic Bank Guarantee
EMD	-	Earnest Money Deposit
EoI	-	Expression of Interest - Tender
EPC	-	Engineering, Procurement and Construction contracts
e-RA (eRAP)	-	Electronic Reverse Auction (Electronic Reverse Auction Process)
ERV	-	Exchange Rate Variation
EXIM	-	Export Import - Policy
FA	-	Framework Agreement (Forward Auction, Financial Adviser)
FA (FA&CAO)	-	Financial Adviser (Financial Adviser and Chief Accounts Officer)

FA-BB	-	Forward Auction Buyer/ Bidder
FAS	-	Free Alongside Ship
FA-SA	-	Forward Auction Seller/ Auctioneer
FEMA	-	Foreign Exchange Management Act
FM	-	Force Majeure
FOB	-	Free On Board
FOR	-	Free On Rail
FOT	-	Free On Truck
GCC	-	General Conditions of Contract
GeM	-	Government Electronic Market
GeMAR&PTS	-	GeM Availability Report and Past Transaction Summary
GFR	-	General and Financial Rules, 2017
GPA	-	GeM Pool Account
GRIR	-	Goods Receipt and Inspection Report
GST	-	Goods and Services Tax; CGST- Central GST; IGST - Integrated State GST SGST : State GST
GTC	-	General Terms & Conditions
GTE	-	Global Tender Enquiry
HoD	-	Head of the Department
HSN	-	Harmonized System of Nomenclature r
IEM	-	Independent External Monitor
IFD	-	Integrated Finance Department
INCOTERMS	-	International Commercial Terms
IPC	-	Indian Penal code, 1860 (This law would be replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024)
IPR	-	Intellectual Property Rights
ISO	-	International Organization for Standardization
ITB	-	Instructions to Bidders (may in some instances be called Instructions to Tenderers - ITT)

ITC - HS	-	Indian Tariff Classification - Harmonised System
KPIs	-	Key Performance Indicators
L1	-	Lowest acceptable bid that is techno-commercially responsive for the supply of a bulk quantity.
LC	-	Letter of Credit
LD	-	Liquidated Damages
LCC	-	Life Cycle Costing
LoA	-	Letter of Award (also called Letter of Intent (LoI, in some contexts)
LPP	-	Last Purchase Price
LTE	-	Limited Tender Enquiry
MeitY	-	Ministry of Electronics and Information Technology
MII	-	Make in India (order)
MoF	-	Ministry of Finance
MSA	-	Mediated Settlement Agreement
MSE	-	Micro and Small Enterprise
MSME(D)	-	Micro Small and Medium Enterprises (Development Act, 2006)
MSP	-	Mediation Service Provider
MTD (SBD)	-	Model Tender Document (Standard Bid Document)
NCLAT	-	National Company Law Appellate Tribunal
NeSL	-	National e-Governance Services Limited
NIC	-	National Informatics Centre
NIT	-	Notice Inviting Tender
NPAE	-	Non-PFMS Agency/Entity
NPV	-	Net Present Value
NSIC	-	National Small Industries Corporation
OEM (OPM)	-	Original Equipment Manufacturer (Original Parts Manufacturer)
OES (OPS)	-	Original Equipment Supplier (Original Parts Supplier)
OTE	-	Open Tender Enquiry
PAC	-	Proprietary Article Certificate

PAN	-	Personal Account Number
PAO	-	Pay and Accounts Officer
PBG	-	Performance Bank Guarantee - as performance security - also see SD.
PFMS	-	Public Finance Management System
PLI	-	Production Linked Incentive
PPD	-	Procurement Policy Division - under the Department of Expenditure, Ministry of Finance
PPP	-	Public Private Partnership (Purchasing Power Parity)
PPP-MII	-	Public Procurement - Preference to Make in India, Order
PQB	-	Pre-qualification Bidding
PQC	-	Pre-qualification Criterion
PR	-	Purchase Requisition/ Indent
PRC	-	Provisional Receipt Certificate
PSE	-	Public Sector Enterprise
PVC	-	Price Variation Clause
QA (QAP)	-	Quality Assurance (Plan)
QCBS	-	Quality and Cost Based Selection
RBI	-	Reserve Bank of India
RC	-	Rate Contract (or Framework Agreement - FA)
RCM	-	Reverse Charge Mechanism
RfP (SRfP)	-	Request for Proposals (Standard Request for Proposals) - Document
RTI	-	Right to Information
SC	-	Survey Committee/ Scheduled Castes
SCC	-	Special Conditions of Contract
SD	-	Security Deposit, also see PBG.
SLA	-	Service Level Agreement
SLTE	-	Special Limited Tender Enquiry
SoPP	-	Schedule of Procurement Powers
ST	-	Scheduled Tribes

STA	-	Subject to Acceptance
STC	-	Special Terms & Conditions
STE	-	Single Tender Enquiry
TC (TPC/ TEC)	-	Tender Committee also called Tender Purchase or Tender Evaluation Committee
TCO	-	Total Cost of Ownership
TCS	-	Tax Collected at Source
TDS	-	Tax Deducted at Source
TIS	-	Tender Information Summary
ToR	-	Terms of Reference
ToT	-	Transfer of Technology
TS	-	Technical Specification
UAM	-	Udyam Aadhaar Memorandum
URC	-	Udyam Registration Certificate
VfM	-	Value for Money
WOL	-	Whole of Life (Costing) also see TCO

Procurement Glossary

Unless the context dictates otherwise, the following definitions shall apply throughout this Manual (The main preferred term is within the inverted comma. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms):

1. "Agent" is a person, or a legal entity employed to act for/ represent another (called the Principal) in dealings with a third person or legal entity. In public Procurement, an Agent is a representative participating in the Tender Process or the execution of a Contract for and on behalf of its principals.

2. "Allied firm" ('affiliates'/ 'affiliated firm', 'sister concern', 'associated firm', or 'related party') of a bidder/ contractor (Principal firm, including Joint Venture Company) is a firm/ concern (including Joint Venture Company) that comes within the sphere of effective control/ influence of the principal firm, wherein the Principal Firm –

   i) being a proprietary firm, owns the Allied Firm,

   ii) being a partnership firm, has common (all or majority of) partners, or any one of its partners has profit share of 20% or more, in the Allied Firm

   iii) has common Management (say majority of director) with the Allied firm;

   iv) its partners or directors have a majority interest in the management of the Allied Firm;

   v) has a controlling voice by owning substantial (20% or more) shares in the Allied Firm;

   vi) directly or indirectly controls or is controlled by or is under common control, by way of any agreement/ MoU or otherwise with the Allied Firm, (v) has the Allied Firm as its successor/ subsidiary or vice-a-versa;

   vii) has common offices/ manufacturing facilities with the Allied Firm.

3. "Bid" ('tender,' 'offer,' 'quotation' or 'proposal') means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such Bids;

4. "Bidder" ('bidder,' 'consultant', 'tenderer', 'contractor' or 'service provider') means any eligible person, firm, or company, including a consortium (that is, an association of several persons, firms, or companies) participating in a procurement process with the Port;

5. "Bid security" ('Earnest Money Deposit'(EMD), or 'Bid Security Declaration') means security from a bidder securing obligations arising from its Bid, i.e., to avoid the withdrawal or modification of its Bid within its validity, after the deadline for submission

of such Bids; failure to sign the resulting contract or failure to provide the required security for the performance of the resulting contract after its Bid has been accepted; or failure to comply with any other condition precedent to signing the resulting contract specified in the solicitation documents;

6. "Bill of Quantities" (Price Schedule, Financial Bid or BOQ) means the priced and completed Bill of Quantities forming part of the bid.

7. "Central Public Sector Enterprise" means a body incorporated under the Companies Act or established under any other act in which the Central Government directly or indirectly owns more than 50 per cent of the issued share capital;

8. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017 (Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4) Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024);

9. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017 (Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4)Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024);

10. "Competent authority" (Competent Financial Authority) in respect of the powers of approval in a procurement process or execution of a resultant contract means an authority to which such power is delegated by or under General and Financial Rules (GFR), Delegation of Financial Power Rules (DFPR), Schedule of Procurement Powers (SoPP) or any other general or special orders issued by the Government of India.

11. "Consignee" means the person to whom the goods are required to be delivered as stipulated in the contract. A contract may provide the goods to be delivered to an interim consignee for further despatch to the ultimate consignee.

12. "Consultancy services" means a one-off (that is, not repetitive and not routine) services involving project-specific intellectual and procedural processes using established technologies and methodologies, but the outcomes – which are primarily of a non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods that are incidental or consequential to such services;

13. "Contract" ('Procurement Contract', 'Purchase Order', 'Supply Order', 'Withdrawal Order,' 'Work Order', 'Consultancy Contract', 'Contract for Services', 'Rate Contract', 'Framework Agreement', 'Letter of Award, 'Agreement', 'Repeat Order', or a 'Formal

Agreement',), means a formal legal agreement in writing relating to the subject matter of Procurement, entered into between the Port and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the Country;

14. "Contractor" ('Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder') means the person, firm, or company, including a consortium (that is, an association of several persons or firms or companies - Joint Venture/ consortium) with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by thePort), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract;

15. "e-Procurement" means the use of information and communication technology (especially the internet) by the Port in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, nondiscriminatory, and efficient Procurement through transparent procedures;

16. "Goods" ('Stores', Item(s) or 'Material(s)') includes all articles, materials, commodities, livestock, medicines, furniture, fixtures, raw materials, consumables, spare parts, instruments, hardware, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or intangible products (e.g. technology transfer, licenses, patents, software or other intellectual properties) but excludes books, publications, periodicals, etc., for a library, procured or otherwise acquired by Port. Procurement of goods may include certain small work or some services that are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training, and maintenance (*Rule 143 of GFR 2017*).;

17. "Indentor" ('User (Department)') means the entity and its officials assessing the need for procurement and initiating a procurement indent, that is, a request to thePort to procure goods, works, or services specified therein;

18. "Inspection" means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods, services or works and comparing the same with the specified requirement to determine conformity.

19. "Inspecting Officer" means the person or organisation stipulated for inspection under the contract and includes his/ their authorised representative(s);

20. "Intellectual Property Rights" (IPR) refers to the owner's rights against unauthorised possession/ exploitation by others of its tangible or intangible intellectual property. It

includes rights to Patents, Copyrights, Trademarks, Industrial Designs, and Geographical indications (GI).

21. "Inventory" means any material, component or product that is held for use later;

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

23. "Letter of Award" ('Letter of Intent' or 'Notification of Award') means the letter or memorandum communicating to the contractor the acceptance of his bid for award of the contract;

24. "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

25. "Model Tender Document(s)" ('Tender (Enquiry) Document(s)', 'Request for Proposal Documents', or 'Standard Bidding Document(s)') means a document issued by the Port, including any amendment thereto, that sets out the terms, conditions of the given Procurement. A Model Tender Document is the model template to be used for preparing a Tender Document after making suitable changes for specific Procurement;

26. "Non-consultancy services" ('Outsourcing of Services') are defined by exclusion as those services that cannot be classified as Consultancy Services. These involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be clearly identified and consistently applied and are bid and contracted on such basis. It may include small works or a supply of goods or Consultancy, which are incidental or consequential to such services;

27. "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017 Notified vide Order No. P-45021/2/2017-PP (BE-II)-Part(4) Vol.II issued by Department of Promotion of Industry and Internal Trade dated 19.07.2024);

28. "Notice inviting Tenders" ('Invitation to Bid' or 'Request for Proposals') means a document and any amendment thereto published or notified by the Port, which informs the potential bidders that it intends to procure the subject goods, services, works or a combination thereof;

29. "Parties": The parties to the contract are the Contractor and the Port, as defined therein;

30. "Performance Security" ('Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments) means a monetary guarantee to be

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

31. "Place of Delivery" The place specified in the contract for delivery of the Goods after approval by the Inspecting Officer (If provided in the contract). These can be the following places as per the terms and conditions of the contract -

    a) The consignee at his premises or

    b) Where so provided, the interim consignee at his premises or

    c) A carrier or other person named in the contract for transmission to the consignee or

    d) The consignee at the destination station, in case of a contract stipulating the delivery of goods at the destination station.

32. "Pre-qualification (bidding) Procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the Procurement;

33. "Pre-qualification Document" means the document, including any amendment thereto issued by Port, which sets out the terms and conditions of the prequalification bidding and includes the invitation to pre-qualify;

34. "Procurement" (or the terms "Public Procurement" or 'Government Procurement/ Purchase' including an award of Public-Private Partnership projects) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, by Port, whether directly or through an agency, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" or "purchase"/ "purchased" shall be construed accordingly;

35. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, comprising a hierarchy of Statutory framework, Rules and Regulations, Manuals of Procurement and Procurement Documents as detailed in Annexure 1 of this Manual;

36. "Procurement Officer" means the officer signing the Letter of Award (LoA) and/ or the contract on behalf of the Port;

37. "Procurement Process" means the process of Procurement extending from the assessment of need, Bid Invitation Process, Bid Evaluation and Award of Contract to the Contract Management;

38. "Procuring Authority" means the officer who finally approves, as well as those officials and committee members who submit the notes/ reports to approve any decision.

39. "Procuring Entity" means the entity in any Ministry or Department of the Central Government or a unit thereof or it's attached or subordinate office to which powers of Procurement have been delegated and handles the entire procurement process, ensuring efficiency, transparency, fair treatment of suppliers, and the promotion of competition; In this Manual, Procuring Entity is Kamarajar Port Limited.

40. "Procuring Organisation" means the Organisation for which the procurement is done to fulfil its stated objectives, assigned duties/ obligations/ responsibilities/ functions, and activities in alignment with desired policy outcomes; In this Manual, Procuring Organisation is Kamarajar Port Limited.

41. "Prospective bidder" means anyone likely or desirous to be a bidder;

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

43. "Rate contract" ('framework agreement') means an agreement between a Central Purchase Organisation or Port with one or more bidders, valid for a specified period, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual Procurement through competition or a predefined process allowing their revision without further competition;

44. "Registering authority" is an authority that registers bidders for various procurement categories;

45. "Registered Supplier" means any supplier who is on a list of registered suppliers of the Port or a Central Purchase Organisation;

46. "Reverse auction" ('Electronic reverse auction') means an online real-time purchasing technique utilised by the Port to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period and automatic evaluation of bids;

47. "Scheduled Commercial Bank" means a bank listed in the Second Schedule of the Reserve Bank of India Act, 1934.

48. "Service" means any subject matter of Procurement that has non-tangible outputs, as distinguished from goods or works, except those incidental or consequential to the

service, and includes physical, maintenance, professional, intellectual, training, Consultancy and advisory services or any other service classified or declared as such by Port but does not include the appointment of an individual made under any law, rules, regulations, or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services;'

49. "Special Conditions of Contract" means Special Conditions that override the General Conditions if and to the extent of the conflict between the two.

50. "Subject Matter Of Procurement" means any object of Procurement, whether in the form of goods, services or works or a combination thereof;

51. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc. and various terms prevalent for such documents) published by the Port to invite bids in a Tender Process. The Tender Document and Tender Process may be generically called "Tender" or "Tender Enquiry", which would be evident from context without ambiguity.

52. "Tender Process" is the entire process from the publishing of the Tender Document to the resultant award of the contract.

53. 'Total Cost of Owning' - TCO (Life Cycle Costing - LCC, Whole of Life Costing - WOL) encompasses all costs associated with acquiring (including the price paid to the supplier), operating, maintaining, and disposing of a product or service. Essentially, the three terms refer to the cost incurred on a product during its lifetime. However, LCC has evolved beyond that to consider the cost of the impact of the product on the environment and, therefore, is mostly used as a tool in Sustainable Public Procurement. WOL is used mostly in capital-intensive assets, infrastructure projects, and long-term investments, and TCO is used mostly in procurement of Goods.

54. "Works" refer to any activity with a tangible and physical output sufficient in itself to fulfil an economic or technical function involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery, and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for roads, railways, airports, shipping ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels, and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair, and maintenance of a mechanical or electrical nature relating to machinery and plants.

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KAMARAJAR PORT LIMITED

MANUAL FOR PROCUREMENT OF GOODS

Section-1

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Chapter-1

Introduction

1.0. Introduction to Procurement of Non-Consultancy Services

1.1. Procurement Rules and Regulations; and this Manual

1. Ports spend a sizeable amount of their budget on Procurement of goods, works and services to fulfil their stated objectives, assigned duties/ obligations/ responsibilities/ functions, and activities in alignment with desired policy outcomes

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

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

4. At the apex of the Statutory framework governing public Procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government must be executed in writing by officers specifically authorised to do so. The Constitution also enshrines Fundamental Rights (In particular, Articles 14 – Right to Equality before Law and 19 (1) (g) – Right to practice any profession, or to carry on any occupation, trade, or Business) which have implications for Public Procurement. Further, the Indian Contract Act of 1872 and the Sale of Goods Act of 1930 are significant legislations governing contracts of sale/ purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Mediation Act, 2023; Competition Act, 2002; Information Technology Act, 2000, etc.) that may be attracted in Public Procurement Transactions.

5. There is no law exclusively governing public procurement. However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6 to 9; Delegation of Financial Powers Rules (DFPR); Government orders regarding purchase preference/

restrictions like Public Procurement (Preference to Make in India), Order 2017, facilities to Micro and Small Enterprises and Startups, Restrictions on Entities from a Class of Countries (Rule 144 (xi), GFR 2017) etc., to increase transparency and objectivity in public procurement.

6. This Manual is intended to draw attention to basic norms and practices governing public procurement.

1.2. Clarification, Amendments and Revision of this Manual

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

1.3. Applicability of this Manual

1. **Category of Procurements:** This Manual is applicable to the Procurement of all "Goods" as defined in the 'Procurement Glossary' section. What is unique about the Procurement of goods (as compared to services and works) is the ability to precisely describe the technical specification and scope of the requirement. Other Manuals for Procurement (of Consultancy/ Non-consultancy Services and Works) are generically based on this Manual. Hence, for any topic for which guidance cannot be found in those manuals, this Manual for Procurement of Goods shall apply mutatis mutandis. For the sake of brevity, those manuals refer to some of the sections of this Manual without reproducing them.

2. **Procuring Entities:** This Manual shall apply to all Procuring Entities covered by Rule 1 of GFR, i.e., all Central Government Ministries/Departments, attached and subordinate bodies. These provisions shall also apply, as per the same rule, to autonomous bodies except to the extent that the bye-laws of an autonomous body provide separate procurement guidelines that the Government has approved. [Such approved guidelines must retain fundamental provisions relating to the Constitution and Government instructions relating to Preferential Procurement Policies, GTE and Land Border restriction, General Instructions on Procurement and Project Management (NO.F.1/1/2021-PPD dtd 20.10.2021)]

3. **Statutory Bodies and CPSEs:** These guidelines shall also be applicable to bodies controlled by the Central Government (inter-alia, Central Public Sector Enterprises (CPSEs or undertakings, including their subsidiary companies/ Ventures except to the extent deviations that have been approved by their competent authority (e.g., Board of Directors).

4. **Indian Missions and CPSE Units Abroad:** The applicability of the Manual in the case of Indian Missions abroad and CPSE Units abroad shall be as per sub-para 2) and 3) above, respectively

5. **Portals:** GeM portal, GePNIC portal (Government e-Procurement of NIC, eproc.gov.in), and various such platforms of different Organisations carry out a

substantial proportion of Public Procurement. Hence, the procedures for such platforms should conform to these 'Procurement Guidelines.'

6. **Outsourced Procurement:** These procurement guidelines would continue to apply if the Port outsources the procurement process, bundle the procurement process with other contractual arrangements, or utilise the services of a procurement support agency or procurement agents to carry out the Procurement on their behalf.

7. **Customisation:** This Manual is to be taken as generic guidelines, which are necessarily broad in nature. Procuring Entities are advised to customise these manuals, with the approval of competent authority and financial concurrence, to suit their local/specialised needs by issuing their own detailed Manuals (including customised formats); Model Tender Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. For procuring organisations that have their own detailed manuals or procedure orders, the initiation, authorisation, Procurement, and execution of contracts undertaken by them shall be regulated by detailed rules and orders contained in their respective regulations and by other special orders applicable to them.

8. **Exemptions**: These procurement guidelines would not apply to procurements by the Port for their own use from their subsidiary companies, including Joint Ventures, where they have a controlling share. Moreover, by a general or special notification, the Government may permit certain 'Procuring Entities' mentioned in the sub-para above, considering unique conditions under which they operate, for all or certain categories of procurement, to adopt detailed approved guidelines for procurement, which may deviate in some respects but conform with all other essential aspects of these 'Procurement Guidelines.'

9. **Procurements financed by Loans/ Grants extended by International Funding Agencies**:

   a) For projects funded by the World Bank, Asian Development Bank, and other International Funding Agencies (IFA), the Articles of Agreement, with the approval of the Ministry of Finance, stipulate either the Indian (or State) Government's own procurement procedures or IFA's specific procurement procedures to be followed by the borrowers.

   b) These guidelines would not be applicable to projects funded by the World Bank using the Investment Project Financing (IPF) instrument and similar instruments of other International Funding Agencies (IFA). IFA's specific procurement procedures shall be applicable as permitted under Rules 264 of GFR 2017.

c) However, for the projects financed using instruments such as Program-for-Results (PforR) of the World Bank, and Results-based lending (RBL) of the Asian Development Bank, and similar instruments of other International Funding Agencies, the application of these guidelines as expressly agreed in the legal agreements shall be followed.

1.4. Categorisation of procurements

1. **Categories**: Categorisation of Procurements helps prepare guidelines for Procurements and Model Tender Documents, which cater to peculiar contractual conditions of the categories of procurements. These categories may be further sub-categorised, e.g., Capital Equipment procurement in Goods. Following are the categories of procurements:

   a) Goods.
   b) Services
      i) Consultancy Services and ii) Non-consultancy services
   c) Works

2. **Distinctive Features**: Normally, such categorisation is evident from their definition, and Procurement should be done accordingly, following the relevant guidelines and Model Tender Documents. The boundaries between such categorisation may not be clear-cut and may overlap. It may neither be possible nor necessary to distinguish between the categories in overlapping areas precisely. Though simplistic, the main distinguishing factors between these are:

   a) While both goods and works lead to tangible outputs (with some exceptions like IPR materials), the main difference between goods and works is that the manufacture of goods is done on the supplier's own premises (other than installation/ commissioning). In contrast, 'Works' is executed on the premises of the Port (other than prefabricated components). Works may include incidental 'Goods' and vice-versa.

   b) The main difference Between 'Goods' or 'Works' on the one hand and 'Services' on the other is the intangibility of the outputs of Services.

   c) The main difference between Consultancy and Non-consultancy services is the level of intellectual input, which is predominant in Consultancy and not central to Non-consultancy. Another difference is that non-consultancy services are repetitive routines with measurable and standardised outputs, while consultancy services are one-off and non-routine, with outputs that are neither precisely measurable nor standardised.

3. **In case of Doubt:** Procurement in cases of doubts about categorisation may be handled as follows:

   a) A simpler procurement procedure should be followed in the case of blurred border lines and grey areas. In case of doubt between:

i) Goods and works/services/ consultancy - it should generally be processed as Procurement of goods.

ii) Works and service/ consultancy - it should generally be processed as Procurement of works.

iii) Non-consultancy and Consultancy services - it should generally be processed as Procurement of non-consultancy services.

b) The Procurement of IT projects should usually be carried out as a procurement of consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:

i) tailor-made software development;

ii) cloud-based services

iii) Composite IT system integration services involve the design, development, deployment, and commissioning of IT systems, including hardware supply, software development, bandwidth, and operation/maintenance of the system for a defined period after going live, etc.

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

d) Composite contracts may involve mixed elements of Goods, Works, and Services. For example, in the Procurement of large machinery, some works and services like Installation, Commissioning, Training, Annual Maintenance Contract (AMC) (or a Comprehensive Maintenance Contract (CMC)), and so on may be incidental to the supply of goods. The relationship of primacy between the goods element and the works/ services element may be examined, irrespective of the relative values. If the primary intention is the Procurement of goods with services/ works being incidental to it, it may be processed as such. However, if the primary intention is Procurement of Works/ services with Procurement of goods being incidental, then it should generally be processed as Procurement of works/ services (as the case may be), irrespective of the relative values. A possible approach could be to have separate but linked contracts for such elements of Goods, Works, and Services, but implementation may become challenging.

1.5. Authorities Competent to incur Expenditure on a Procurement

1. The first step in procurement to procure goods, services or works involves a formal decision to procure something along with the exact or approximate expenditure to be incurred. A Competent authority which is competent to incur expenditure may accord administrative sanction/ approval to incur expenditure on a specific procurement in accordance with the Delegation of Financial Rules. Port may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 4.

2. Being a decision with a financial bearing and hence invariably requires consultation with the Head of Finance Department.

   a) **Normal Procedure**: The concurrence of the Finance department shall be required on all procurement matters, except for matters where re-delegation has been done within the limits permissible under the rules/ general orders/ general instructions.

   b) **Special Procedure:** The Port may, with the prior concurrence of the Board, lay out the types/ classes of cases where the Finance department consultation would be required which may be in terms of threshold financial limits, stages in procurement or types of procurement and contracts viz. consultancy, goods and works contracts etc. or any permutation thereof.

3. In all procedures, payments under approved contracts shall not require consultation with Finance except in cases where the payments are in relaxation/variation to approved contract conditions.

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

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

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

1.6.1 Right Quality:

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with precise specifications of the Port's requirements, a proper understanding of the functional value and cost, an understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value (Please refer to para 1.7 below). Technical specifications and quality assurance plans are the most vital ingredients for the right quality. In public procurement, it is essential to give due consideration to value for money while preparing the specifications.

1.6.2 Right Quantity:

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

1.6.3 Right Price:

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity, and other factors involved (or should not be abnormally low for facilities, works, or services, which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to consider not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs, and disposal costs (Also termed as life cycle costing - please also refer to para 1.7 below)

1.6.4 Right Time and Place:

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

1.6.5 Right Source:

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

1.7. Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost of Ownership (TCO), Life Cycle Cost (LCC) or Whole-of-Life (WOL) to consider not only the initial acquisition cost but also the cost of operation, maintenance, and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economical use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g., in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimise habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. *In public Procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of Procurement and tendering system.* These advanced concepts are explained in Appendix-GM-S2/1.

1.8. Fundamental Principles of Public Procurement

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

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

(Detailed principles are given in Appendix-GM-S2/A6)

1.9. Standards (Canons) of Financial Propriety

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

Rule 21. Standards of financial propriety: Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by

subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following: -

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

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

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

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

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

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

1.10. Public Procurement Infrastructure at the Centre

1.10.1. Procurement Policy Division

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

1.10.2. Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed, and hosted by the National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide single point access to the information on procurements made across various Ministries and Departments. The CPPP has e-publishing and e-procurement modules. It is mandatory for all Ministries / Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information on documents relating to pre-qualification, Bidders' registration, Tender Documents, details of bidders, their pre-qualification, registration, exclusions/ debarments, decisions taken regarding pre-qualification and selection of successful bids. Implementing end-to-end e-procurement for all procurements is also now mandatory either through the CPPP

portal or any other suitable GCQE compliant portal. (Guidelines for Compliance to Quality Requirements of eProcurement (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

1.10.3 Government e-marketplace (GeM)

GeM (Government e-Marketplace) is the 'National Public Procurement Portal,' serving as an end-to-end online marketplace for various entities. The Procurement of Goods and Services available on GeM (as per Rule 149 of GFR, 2017) is mandatory for Ministries/ Departments (including attached/ subordinate offices), CPSEs, autonomous bodies and local bodies. GeM facilitates the Procurement of common-use goods and services by such entities. The GeM portal aims to enhance efficiency, transparency, and speed in public Procurement. Through this paperless, contactless, and cashless platform, registered government buyers can seamlessly procure goods and services from registered sellers. It is a significant step toward modernizing and streamlining the procurement process in India.

1.10.4 Comptroller and Auditor General (CAG) of India

1. The Comptroller and Auditor General (CAG) of India, established under Articles 149-151 of the Constitution of India, holds a pivotal role as the Supreme Audit Institution of India (SAII). CAG plays a crucial role in promoting accountability, transparency, and good governance through high-quality auditing and accounting. It provides independent and timely assurance to the legislature, the public, and the executive that public funds are being collected and utilised effectively and efficiently.
2. The CAG's mandate encompasses a wide spectrum of audit and reporting responsibilities:
    a) Government Departments and Entities;
    b) Government Companies and Corporations;
    c) Autonomous Bodies and Authorities (municipal bodies, IIMs, IITs, state health societies) that receive government funding;
    d) Special Requests and Initiatives: The CAG can audit the accounts of any other body or authority upon request of the President/Governor or on its own initiative;
3. CAG conducts multiple types of audits, namely Compliance Audits, Financial Audits, Performance audits, Thematic audits, and IT audits. These audits, especially the performance audits, are noted to cover Procurement, but only with the perspective of identifying if any wastage, malpractice, and fraud have occurred;

4. To carry out its extensive audit mandate effectively, the CAG is endowed with significant powers:

   a) Inspection Authority: The CAG has the power to inspect any office or organisation subject to its audit.

   b) Transaction Examination: It can examine all transactions and question the executive regarding financial matters.

   c) Record Access: The CAG can call for records, papers, and documents from any audited entity.

   d) Audit Extent and Manner: It has the authority to decide the extent and manner of audit to ensure thorough scrutiny.

1.10.5 Lokpal/ Lokayukta – Anti-corruption Ombudsman

1. Lokpal and Lokayukta Act, 2013 and its amendment in 2016 (the Act) provides for Lokpal in the Central (Union) Government and Lokayukta in the State Governments as the statutory anti-corruption Ombudsman to inquire into allegations of corruption against public servants and for related matters. Once appointed by the President, in the case of Lokpal, or the Governor, in the case of Lokayukta, they cannot be transferred or removed except by impeachment proceedings undertaken by the Parliament or the State legislatures, respectively.

2. The Act outlines Lokpal and Lokayuktas' roles, powers, and responsibilities. It has a broad scope regarding the individuals it covers - extending to Union Ministers (including the serving and former Prime Ministers), Members of Parliament, and various categories of public servants, including those in Group 'A,' 'B,' 'C,' or 'D' positions as defined in the Prevention of Corruption Act, 1988. All entities (NGOs) receiving donations from foreign sources in the context of the Foreign Contribution Regulation Act (FCRA) above Rs 10 lakh per year are also under the jurisdiction of Lokpal. The Act grants Lokpal powers to sanction prosecution against public servants.

3. There are exceptions in matters related to international relations, external and internal security, public order, atomic energy, and space. To initiate an inquiry into such cases, at least two-thirds of Lokpal members must approve. The Act emphasises confidentiality. If Lokpal concludes a complaint is baseless, the inquiry records remain undisclosed to the public or any party involved.

4. One significant aspect of the Act is the requirement for public servants to declare their assets in a specified manner. This transparency measure aims to deter corruption and promote accountability.

5. The organisation consists of one Chairperson and a maximum of eight other members. The age of Lokpal (Chairperson or member) on the date of assuming office as the Chairperson or member should not be under 45 years. Out of those

eight members, four members are judicial members who are or have been judges of the Supreme Court or a Chief Justice of a High Court, and the remaining four members are non-judicial members - people of impeccable integrity and outstanding ability, having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law, and management. Fifty per cent of the Members shall be from Scheduled Castes / Scheduled Tribe / Other Backward Classes / Minorities and women.

6. The Chairperson and Lokpal members are selected through a selection committee consisting of the PM, Speaker of Lok Sabha, leader of opposition in Lok Sabha, Chief Justice of India (CJI), or a sitting Supreme Court judge nominated by CJI. Another eminent jurist is to be nominated to the selection committee by the President of India based on recommendations of the first four members of the selection committee "through consensus".

7. Lokpal may refer complaints for investigation to the Central Bureau of Investigation (CBI). For such cases, CBI would work under Lokpal's supervision. It envisages a 'Directorate of Prosecution' under the overall control of the Director CBI with a fixed tenure of two years. The appointment of the director of prosecution is to be based on the recommendation of the Central Vigilance Commission. Transfer of CBI officers investigating cases referred by Lokpal shall be with the CVC's approval.

8. The act lays down clear timelines for preliminary enquiry investigation and trial and has provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.

1.10.6 Central Vigilance Commission (CVC)

1. Under the Central Vigilance Commission Act 2003, the CVC is a statutory body headed by the Central Vigilance Commissioner and comprising not more than two Commissioners. It is conceived to be the apex oversight institution, independent from any executive authority. There are two Chief Technical Examiners (CTE) who oversee public procurement.

2. All Central (Union) Government entities appoint a Chief Vigilance Officer (CVO) in consultation with the CVC. CVOs undertake system audits and preventive/ forensic investigations in the Entity and report them to the CVC.

3. CVC only investigates and recommends punitive and follow-up actions to the concerned entity but has no punitive powers by itself. The recommendations are not binding on the entities, but CVC may report any deviations from recommendations to the parliament. It has an advisory role in Discipline and Appeal cases arising from its investigations. It plays a role in sanctioning prosecutions related to corruption and consultations in key appointments. CVC

also has a role in the appointment of Independent External Monitors (IEM) under the Integrity pact (wherever applicable) for Central (Union) Government Entities. CVC submits an annual report to the Parliament regarding its investigations.

4. CVC has superintendence over the functioning of the Central Bureau of Investigation (CBI) regarding the investigation of offences related to corruption in Central (Union) Government Agencies. CVC has jurisdiction over cases under the Lokpal and Lokayukta Act, Whistle Blower Act, and Money Laundering Act.

5. It has the powers of a civil court when conducting any inquiry. CVC and CVOs do not have the powers of Police to arrest, seize properties, and enforce compliance from nongovernment agencies. Therefore, cases requiring such action are entrusted to the CBI.

6. To avoid conflict of interest, CVO and vigilance officers shall not associate with decision making that may have vigilance sensitivities. Some organizations have a system wherein executive work, like the shortlisting of arbitrators or the debarment of firms, is entrusted fully/ partially to vigilance. The same is not appropriate and also against the CVC Vigilance Manual.

7. The following levels/ categories of officials are covered under the jurisdiction of the Central Vigilance Commission:

   a) Members of All India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government. However, officers of central services, even those working in state governments, are also under its jurisdiction.

   b) Schedule 'A' and 'B' Public Sector Undertakings of the Central Government - Chief Executives and Executives on the Board and other officers of level E-8 and above

   c) Schedule 'C' and 'D' Public Sector Undertakings of the Central Government - Chief Executives and Executives on the Board and other officers of level E-7 and above

   d) Public-Sector Banks - Officers of the rank of Scale V and above

   e) Reserve Bank of India, NABARD and SIDBI - Officers in Grade 'D' and above

   f) General Insurance Companies - Managers and above

   g) Life Insurance Corporation of India - Senior Divisional Managers and above;

   h) Societies and local authorities owned or controlled by the Central Government - Officers drawing a salary of Rs 8700/- per month and above.

1.10.7 Central Bureau of Investigation (CBI)

1. Under the Delhi Special Police Establishment Act, 1946, the Central Bureau of Investigation (CBI), a police organisation under the Dept. of Personnel, Ministry of Personnel, Pension & Public Grievances, is the only oversight agency with police powers. It investigates and prosecutes corruption cases (including those related to public procurement) requiring arrest, seizure of properties and enforcement of compliance from non-government agencies. The prosecutions are carried out under inter-alia the Prevention of Corruption Act, 1988. It takes up cases based on complaints received from stakeholders or the general public. Though its jurisdiction is restricted to Delhi and UTs, under sections 5 & 6 of the act, the Central government can extend its powers and jurisdiction to a state with the consent of the government of that State for investigation of specified offences (generally related to All India services or Members of Parliament). High Courts and the Supreme Court can also order the CBI to investigate cases outside its normal jurisdiction for which no consent is required from the state.

2. The Delhi Special Police Establishment (DSPE), which forms a part of the Central Bureau of Investigation, has two Divisions, viz. (i) Anti-corruption Division (ACD) and (ii) Special Crimes Division (SCD). ACD investigates all cases registered under the Prevention of Corruption Act 1988. If an offence under any section of the Indian Penal Code (IPC), 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024) or any other law is committed along with the offence of bribery and corruption, it shall also be investigated by the ACD. The ACD also investigates cases of serious irregularities allegedly committed by public servants. The SCD, on the other hand, investigates all cases of Economic offences and all cases of conventional crime, such as offences relating to internal security, espionage, sabotage narcotics and psychotropic substances, antiquities, murders and dacoities/robberies, cheating, criminal breach of trust, forgery dowry deaths, suspicious deaths, etc.

3. While the superintendence of DSPE, as far as it relates to an investigation of offences under the Prevention of Corruption Act, 1988, vests in the CVC, for all other matters, the superintendence of DSPE vests in the Central Government.

4. The administration of DSPE vests in the Director of the CBI, who is appointed on the recommendations of a committee headed by the Central Vigilance Commissioner. He holds office for a period of not less than two years. The Director of CBI exercises in respect of DSPE powers exercisable by an Inspector General of Police regarding the police force in a State.

5. DSPE cannot conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988, except with the prior approval of the Central Government where such allegation relates to employees at the level of Joint Secretary and above in the Central Government

or corporations established by or under any Central Act, Government companies, societies, and local authorities owned or controlled by it.

6. No such approval, however, is necessary for cases involving the arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration.

1.11. Reserved Items and Other Purchase/ Price Preference Policies

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. (General and Financial Rules, 2017, Rule 153).

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

1.11.1 Reservation of Procurement of Certain Class of Products from Certain Agencies

1. **Khadi Goods/Handloom Textiles:** Out of the total procurement of handloom origin textiles required by Central Government departments throughout the year, it shall be mandatory to make procurement of at least 20% from the Khadi & Village Industries Commission (KVIC) and/ or Handloom Clusters such as Co-Operative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Card (Notified vide OM No. F.10/2/2019-PPD(Pt.) issued by Department of Expenditure dated 17.02.2020). Khadi and Handloom goods are also available in the government e-marketplace (GeM). (General and Financial Rules, 2014, Rule 153-(i)).

2. **Pharmaceuticals from Pharmaceutical CPSEs**:

   a) The Pharmaceuticals Purchase Policy (Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, OM 50(9)/ 2010-PI-IV Dtd 10/12/2013), 2013 is intended to ensure.

      i) Optimum utilization of the installed capacity and the provision of a necessary fillip in reviving these ailing pharmaceuticals CPSEs.

      ii) Availability of quality medicines at low prices to the masses

      iii) Drug security of the nation.

   b) The salient features of this policy are as follows:

i) Pharmaceuticals Purchase Policy in respect of 103 (one hundred and three) medicines, originally valid for a period of five years, has now been renewed and extended (As approved by Union Cabinet in its meeting held on 20.11.2019) till the final closure/ strategic disinvestment of the Pharma PSEs mentioned below.

ii) Pharmaceuticals Purchase Policy will extend only to Central Public Sector Enterprises (CPSEs) under the administrative control of the Department of Pharmaceuticals, such as Indian Drugs and Pharmaceuticals Limited (IDPL), Hindustan Antibiotics Limited (HAL), Bengal Chemicals and Pharmaceuticals Limited (BCPL), Karnataka Antibiotics and Pharmaceuticals Limited (KAPL) and Rajasthan Drugs and Pharmaceuticals Limited (RDPL) and their subsidiaries where Government of India owns 51% (fifty-one per cent) or above shares.

iii) This would be applicable to purchases by Central Government Departments, their Public Sector Undertakings, Autonomous Bodies, etc. This would also be applicable to the purchase of medicines by state governments under health programmes funded by the government of India, such as the National Rural Health Mission.

iv) The pricing of the products would be done by the National Pharmaceutical Pricing Authority (NPPA) using the cost-based formula, as mentioned in the Drugs Price Control Order, 1995. A uniform discount of 16% (Sixteen per cent) would be extended to all products. All the taxes, whatsoever, would have to be passed on to buyers.

v) Annual revision of prices would be linked to the Wholesale Price Index as per provisions contained in the Drugs Prices Control Order, 2013.

vi) The Port would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.

vii) In case pharma CPSEs and their subsidiaries fail to supply the medicines, the Port would be at liberty to make purchases from other manufacturers. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.

viii) The list of medicines (please refer to Annexure 29) may be reviewed and revised by the Department of Pharmaceuticals as per requirement.

3 **Reservation of specific items for procurement from Micro and Small Enterprises (MSE):** To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE [presently 358 (three hundred and fifty-eight] items including eight items of Handicrafts) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list can be found on the MSME Ministry's website. Ministry of MSME has clarified that the laminated paper Gr. I, II and III are not covered under the paper conversion product (Sl.No.202) of the Public Procurement Policy (Policy Circular No. 21(6)/2016-MA dated 26.05.2016). NSIC may be contacted to locate the sources of such reserved items.

1.11.2 Public Procurement Policy for Micro and Small Enterprises (MSEs)

1. The Policy: From time to time, the Government of India lays down procurement policies (Rule 153 (ii) of GFR 2017) to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises, and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in the exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, which is mandatory to be followed by Central Government Ministries/ Departments/ Public Sector Undertakings. Details of the policy, along with the amendments issued in 2018 and 2021, are available on the MSME website.

2. Eligibility:

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

b) This Policy provides preferential procurement of goods produced and services rendered by MSEs. Traders/ distributors/ sole agents/ Works Contract are excluded from the purview of the policy.

i) In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all nontax benefits of the category (micro, small, or medium) it was in before the re-classification, for a period of three years from the date of such upward change. (Notified by MSME Ministry vide S.O. 4926(E) dt 18/10/2022)

ii) MSEs would be treated as owned by SC/ ST or Women entrepreneurs:

1 In the case of proprietary MSE, proprietor(s) are SC /ST or Woman;

2 In the case of partnership MSE, the SC/ ST or Women partners hold at least 51% (fifty-one per cent) shares in the unit;

3 In the case of Private Limited Companies, SC/ ST or Women promoters hold at least 51% (fifty-one per cent) share.

3. **Applicability and Exemptions**:

a) The policy is applicable to Central Government Ministries/ Departments/ Public Sector Undertakings

b) The policy is not applicable to State Government Ministries/ Departments/ State PSEs, but they have similar policies applicable in their state.

c) **Exemptions:** Given their unique nature, defence armament imports shall not be included in computing the 25 (twenty-five) per cent goal for the Ministry of Defence. In addition, defence equipment like weapon systems, missiles, etc., shall remain out of the purview of such a reservation policy. Monitoring of goals set under the policy will be done, as far as they relate to the Defence sector, by the Ministry of Defence itself in accordance with suitable procedures to be established by them.

4. **Facilities for MSE**:

a) **Reduced Transaction Costs**: To reduce the transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposits, and adopting e-procurement to bring transparency in the tender process. However, exemption from paying Performance Bank Guarantee/ Security Deposit is not covered under the policy.

b) **Relaxation in Prior Turnover and Experience**: The Port may relax the condition of prior turnover and prior experience for start-up enterprises recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications. Startups may be MSMEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Port not to relax such criteria (Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016). The decision of the Port in this regard shall be final. Please also refer to para 5.1.3-7-c) and 7.4.2-1-b). (Rule 173 (i) of GFR 2017).

c) **Timely Payments**: Chapter V of the MSMED Act, 2006, also has provisions for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days from the deemed acceptance of the materials supplied by the MSMEs; in case of any discrepancies in the

supplies, then the Port shall raise an objection to the MSME supplier within 15 days from the date of receipt of materials if such objection is not raised, then it will be taken as deemed acceptance. For delays in payment, the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding the recovery of such payments and interests, the Micro and Small Enterprises Facilitation Council has been set up in various states.

5. **Purchase Preference**:

a) Under the amended Public Procurement Policy for MSEs, Order 2012, the Central Government Ministries/ Departments/ Public Sector Undertakings shall procure a minimum of 25 per cent of their annual value of goods or services from MSEs. (In accordance with General Financial Rules, 2017, Rule 153-(ii)).

b) The annual goal of procurement from MSEs also includes subcontracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by the National Small Industries Corporation. If a subcontract is given to MSEs, it will be considered as procurement from MSEs.

c) In tender, if the L1 price is from someone other than an MSE, participating Micro and Small Enterprises (MSE) quoting prices within a price band of L1+15 (fifteen) per cent shall be allowed to supply up to 25 (twenty-five) per cent of the total tendered value by bringing down their price to L1 price. If there is more than one eligible MSE within such price band who agree to match the L1 price, the 25 (twenty-five) per cent quantity is to be distributed proportionately to them

Note: If the Port negotiates with the non-MSE L1 bidder, the price band (L1+15%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible MSE bidders shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 25% quantity.

i) Out of the target of 25% of annual procurement from MSEs (Not in the specific tender), the sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs, and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in the event of failure of such MSEs to participate in the tender process or meet tender requirements and L1 price, the 4% sub-target for procurement

earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneurs will also be met from other MSEs.

ii) In case the tender item cannot be split or divided, etc., the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

iii) When an L1 bidder is not a Micro and Small Enterprise (MSE), MSE bidders eligible for purchase preference under the policy are those whose prices fall within the preference margin of L1+15%. If the Port negotiates with the L1 bidder, the preference margin (L1+15%) should be calculated based on the original L1 price, not the lower negotiated price. Such eligible MSEs should be invited to match the negotiated L1 price as per the policy.

6. **Developing MSE Vendors**: The Central Ministries or Departments or Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organising Vendor Development Programmes (VDP) or Buyer-Seller Meets focused on developing Micro and Small Enterprises (MSEs) for procurement through GeM Portal. To enhance the participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSEs should conduct Special Vendor Development Programmes/ Buyer-Seller Meets for SC/STs and Women MSEs.

7. **Policy Implementation**:

a) A Review Committee has been constituted under the Chairmanship of the Secretary, Ministry of MSME, to monitor and review the Public Procurement Policy for MSEs. M/o MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments CPSEs for exemption from 25 (twenty-five) per cent target on a case-to-case basis and monitor achievements under the Policy.

b) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSEs from MSEs, the Ministry of MSME launched the MSME 'Sambandh' Portal on 8th December 2017 for uploading procurement details by all CPSEs on a monthly and an annual basis, which the Ministry regularly monitors. (Any payment grievances filed by the MSMEs against Port may be monitored and progress updated therein. Total value of month end payments due to the MSMEs may updated).

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

d) A National SC/ST hub (NSSH - https://scsthub.in/) scheme was launched in October 2016 to provide handholding support to SC/ST entrepreneurs, and it is being coordinated / implemented by the NSIC under this Ministry.

e) Clarifications: The office of the Development Commissioner (Micro, Small & Medium Enterprises) issued an FAQ on the Public Procurement Policy for MSE Order, 2012, which is in Annexure 32.

1.11.3. Procurement Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017 (Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020). The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works, and Services. The detailed Procedure is given in Appendix-GM-S2/A7

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

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

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

2. Detailed provisions in this regard have been notified by the Department of Expenditure's OM No. F.7/10/2021-PPD (1) dated 23.02.2023, which are given in Appendix-GM-S2/A8

1.11.5. Support to Start-up Enterprises

1. Definition of Start-up Enterprises

a) As defined by DPIIT, an entity shall be considered as a 'Start-up':

   i) Up to a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India, and

ii) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees, and

iii) The entity works towards innovation, development or improvement of products or processes or services or a scalable business model with a high potential for employment generation or wealth creation.

b) Provided that an entity formed by splitting up or reconstructing an existing business shall not be considered a 'Start-up'.

c) A Start-up so identified under the above definition shall be required to obtain and submit along with his bid a certificate of an eligible Start-up from the inter-Ministerial Board of Certification to obtain support.

2. Support to Start-ups

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

a) Exemption from submission of Bid Security: Such Start-ups shall be exempted from payment of Earnest Money.

b) Relaxation in Prior Turnover and Experience: The Port reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises recognized by the Department for Industry & Internal Trade (DPIIT), subject to meeting quality & technical specifications (Such relaxation can be partial – e.g., 25% relaxation over specified turn-over and experience). Startups may be MSMEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but normally has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Port not to relax such criteria (Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016). The decision of the Port in this regard shall be final. Please also refer to para 5.1.3-7-c) and 7.4.2-1-b) (Rule 173 (i) of GFR 2017).

1.11.6 Domestically Manufactured Iron & Steel Products (DMI&SP) Policy, 2019

1. **Background**: DMI&SP policy provides a preference for Domestically Manufactured Iron and Steel Products (DMI & SP) in Government procurement. By promoting domestically manufactured iron and steel products as well as capital goods used for manufacturing iron and steel products, the Policy contributes to the growth of the Indian iron and steel industry. It was first notified in May 2017, revised in May 2019, and further amended in December 2020. The Ministry of Steel notified on March 8, 2024, of the extension of this Policy till November 2024. The details are given in Appendix-GM-S2/A9

1.12. Right to Information and Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo-motu or proactive basis, and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued "Guidelines on suo motu disclosure under Section 4 of the RTI Act" vide their OM No.1/6/2011-IR dated April 15, 2013. The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

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

1.13. Public Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below. Details and procedures of various stages of the procurement cycle shall be described in subsequent Chapters of the manuals:

a) **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning (including market consultation, if required).

b) **Bid Invitation Process**: Preparing tender documents, publication, receipt and opening of bids;

c) **Bid Evaluation and Award of Contract:** Evaluation of bids and award of contract;

d) **Contract Management:** Contract management and closure.

e) **Disposal of Scrap:** Disposal of Scrap through various modes of disposal.

1.14. Nomenclature Conundrum

1. There is no standardised nomenclature in Public Procurement in India, and a mix of American, European, and British/ Indian nomenclature has become common. 'Tender' is taken to mean (i) the 'Tender Document' or 'Tender Process' as well

as (ii) the 'Bid' submitted by the 'bidders.' The Tender Document floated by Port is also called a Bid (or Bidding) Document. Similarly, participants in a 'tender' are alternatively called bidders and tenderers. This duality is reflected in "Notice Inviting Tenders' and 'Instructions to Bidders' etc.

2. An attempt is made to standardise the term 'Tender' for 'Tender Document' (document prepared and published by the Port, instead of bid/ bidding document) or 'Tender Process' and Bid for the 'bid' submitted by the 'bidders' and hence 'bidder' is used instead of the tenderer. Similar attempts are made to standardise other nomenclature in this document without disturbing the nomenclature (e.g., Pre-qualification Bidding) embedded in the CPPP or GeM portals.

Chapter-2

Need assessment and Procurement Planning

Need assessment, Formulation of Specifications and Procurement Planning

2.1. Need Assessment

1. Procurements should be initiated only based on an indent (Please refer to Annexure 5) from the user Department. The authority in the user Department initiating the indent for procurement shall first determine the need (including anticipated quantum) for the subject matter of the procurement. Description and Specification of Need assessment is of fundamental importance in ensuring value for money, transparency, competition, and level playing field in procurement. The user department shall maintain all documents relating to the determination and technical/financial/budgetary approvals needed for procurement.

2. During need assessments, the following matters are decided to comply with the 'Procurement Guidelines':

a) **The expression/ description of the need** is an important determinant of Value for Money (VfM) and wide competition. Therefore, to the extent practicable, it should be:

   i) Unambiguous, complete, using common terminology prevalent in relevant trade;

   ii) In accordance with the guidelines prescribed, if any, in this regard,

   iii) Except in the case of proprietary purchase from a selected single source, reference to trademark, brand/ trade names, catalogue numbers, or other details that limit any materials or items to the specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent."

b) **The method of satisfying it** (owning /leasing/ hiring/ outsourcing or through Public Private Partnership (PPP), and so on) may be determined as per policies declared in this regard or based on a techno-economic evaluation (using life cycle cost if feasible) of various alternative methods of satisfaction of the need and compatibility and interoperability with existing infrastructure or systems. There are now new procurement approaches like Hardware as a Service [It allows customers to outsource their IT infrastructures, such as servers, networking, processing, storage, virtual machines, and other resources. Customers access these resources on the Internet using a pay-as-per-use model.] (HaaS, also known as Infrastructure as a Service - IAAS) and Software as a Service (SaaS) [The SaaS provider is responsible for operating, managing, and maintaining the application software hosted on the cloud and the infrastructure

on which it runs. The customer simply creates an account, pays a fee and uses the software over an internet connection by way of a web browser, mobile app or thin client].

c) **The quantity** of the subject matter of procurement commensurate with the economy:

i) Care should also be taken to avoid purchasing quantities in excess of the requirement to avoid inventory carrying costs. Where scales of consumption or usage limits of requirements have been laid down by the Competent Authority, the officer signing the indent should also certify that the prescribed scales or limits are not exceeded. It is also necessary to round off the calculated quantity to the nearest wagon load/ truckload/ package to economise on transportation.

ii) An appropriate size of the tender has a great impact on value for money and the level of competition. A balance is achieved by judicious packaging requirements of different users or slicing requirements into smaller tenders. Please refer to para 2.5.1-2-(b) below on merits and demerits of packaging and slicing of requirements.

iii) Units of quantity are an important parameter. Some items may be manufactured in metric tons but may be used in units of numbers or units of lengths (for example, steel sheets/structural). For the sake of transparency, it is important to buy an item in units of manufacture. For example, it is better to buy steel/structural in units of weight since it has a tolerance in weight per unit of length; this usually works to the disadvantage of the buyer if it is bought in units of length. The buying and issuing units of an item may be different – but should be standardised.

d) **Time-schedule and place** of product/work/service delivery: Need assessment and generation of indent for procurement should be done sufficiently in advance of the time when goods are required. Delays in need assessment have an adverse impact on the value for money and transparency. Great care is required to be exercised in filling up realistic dates for the requirement of material. The procuring department should be allowed time in accordance with the established lead times. In urgent cases, the Port may entertain indents providing shorter periods, but such urgencies should be approved by the authority empowered to grant administrative approval for the indent and must be accompanied by proper justification.

e) **Formulation of Specifications** ensures value for money, transparency, a level playing field, and the widest competition. This is further detailed in para 2.2 below.

f) **Estimation of Cost**: The estimated cost in the indent is a vital element in various procurement processes, approvals, and the establishment of reasonable prices at the time of evaluation of the bids. Therefore, it should be worked out realistically and objectively. Following are some of the suggested methods of cost

estimates. These are neither mandatory nor comprehensive nor in any order of preference. These methods are not mutually exclusive, and triangulation from different methods would give a more accurate estimate of cost:

i) **Where historical cost data is available** - Last purchase price (or estimated rate in past indents) of this or similar or nearly equivalent requirements, after due updation as per sub-para iv) below;

ii) **Where no historical cost data is available – Costing Analysis**: Where no historical cost data is available, costing analysis through the internal or external expert costing agencies provides a reliable estimate of cost;

iii) **Where no historical cost data is available, and Costing Analysis is not feasible:** In such situations, a rough assessment of cost can be arrived at but should be used with caution for evaluation of the reasonableness of bids:

1) Rough assessment from the price of the assembly/ machine of which the item is a part or vice versa;

2) Published catalogues/ Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items. It may be noted that MRPs usually include significant margins for distributors, wholesalers, and retailers;

3) As a last resort, a rough assessment of the opportunity cost of not using this item at all;

4) **Market Survey**: For commercially available goods, a formal market survey online (GeM portal or other commercial market apps) or a physical survey of the market can provide a reasonable estimate of cost.

5) **Budgetary Quotes**: For equipment/ craft that are custom-built to the buyer's specifications, the best way to get a rough assessment of costs is by obtaining budgetary quotes from potential parties. Ideally, there should be three quotes. However, there is a need to have a time schedule for receipt of quotes to ensure some timeframe for this activity. Thus, an attempt should be made to obtain as many budgetary quotes as possible from reputed/potential firms, and a time (if feasible, ten to twenty-one days) should be indicated. In the event of receipt of less than three budgetary quotes, two extensions (if feasible, of five to days each) may be considered. In the event of the non-availability of three quotes within the above extended period, the estimates should be prepared based on the number of budgetary quote(s) received, which may even be one, and where more than one budgetary quote is received, the estimate should be framed on an average of the quotes

which will reduce variations and fluctuations. It may be noted that budgetary quotes are not exact estimates, as the bidder who expects to be short-listed may quote high rates, and the bidder who does not expect to be shortlisted may quote abnormally low prices to queer the pitch for others.

iv) **Updation of Historical Data**: Historical cost data can be supplemented with escalations to cater for inflation, price increases of raw materials, labour, energy, statutory changes, price indices, and so on, to make them usable in conditions prevailing currently. In the case of foreign currencies, the rate should be reduced to a common denomination of Indian Rupees. Price indices can be obtained from the following websites. Some may require prior free registration, and some have paid subscriptions:

1) For price indices of indigenous items: http://www.eaindustry.nic.in/home.asp.in (Ministry of Industry);

2) For metals and other minerals:

http://www.mmronline.com/ or http://www.metalprices.com/index.asp or http://www.asianmetal.com/;

3) For price trends of nonferrous details, London Metal Exchange - https://www.lme.com/ gives price trends of nonferrous details, which often show volatile trends;

4) http://www.tradeintelligence.com/ and http://www.cmie.com/. (Centre for Monitoring Indian Economy);

5) For price trends of different countries: http://www.imf.org/external/pubs/ft/weo/2015/01/ (International Monetary Fund)

6) For organisations/chambers of commerce such as the (Indian Electrical and Electronics Manufacturer's Association): www.ieema.org;

6) Commodity Prices: Multi Commodity Exchange of India Limited (MCX): https://www.mcxindia.com/home

7) Cross-commodity price reporting agency (PRA) - Fast markets: https://www.fastmarkets.com/

2.2. Formulation of Technical Specifications (TS)

2.2.1 Value for Money and Technical Specifications:

The procuring authority should ensure that specifications are developed to ensure VfM, a level playing field and wide competition in procurement [Rule 173 (ix) of GFR 2017]. The TS constitute the benchmarks against which the Port will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined

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

1. Ensures a level playing field and the widest competition;
2. Be unambiguous, precise, objective, functional, broad-based/generic, standardised (for items procured repeatedly) and measurable. TS should be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods;
3. Set out the required technical, qualitative and performance characteristics to meet just the bare essential specific needs of the Port without including superfluous and nonessential features, which may result in unwarranted expenditure;
4. Normally, these standards should be based on national technical regulations or recognised national standards (Bureau of Indian Standards - BIS) or building codes, wherever such standards exist. Preference should be given to procure the goods which carry the BIS mark. In the absence of national standards, TS may be based on the relevant International standards. Provided that an indenting authority may, for reasons to be recorded in writing, base the TS on equivalent international standards even in cases where BIS standards exist. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the CA. Where the technical parameters are only marginally different, Indian standards may be specified, and the Departmental specifications could cover only such additional details as packing, marking, inspection, and so on, as are specially required for a particular end use;
5. All dimensions incorporated in the specifications shall be indicated in metric units. If, for some unavoidable reason, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated. In the case of Government of India funded projects abroad, the technical specifications may be framed based on the requirements and standards of the host beneficiary Government, where such standards exist - provided that Port may, for reasons to be recorded in writing, adopt any other technical specification. [It has been reiterated by Department of Expenditure vide OM F.N.12/17/2019-PPD dated 12.05.2020 that wherever Indian Technical specifications and Quality Certifications exists, the Port should prescribe them. In those rare or exceptional cases where, despite the existence of Indian technical specifications, the Port intends to specify foreign Technical Certifications and Accreditations, it must record its reasons in writing for adoption of such other technical specifications. This may also be subject to matter of audit].

6. Make use of best practices: Examples of specifications from successful similar procurements in other organisations or sectors may provide a sound basis for drafting the TS;

7. Commensurate with VfM, avoid procurement of obsolete goods and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided for otherwise in the tender documents;

8. Environmental Issues, Green Procurement, Sustainable Development Goals:

   a) Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations or internal guidelines, if any, applicable to the goods to be purchased.

   b) While specifying packaging requirements in the supply of Goods/ Works/ Services, the Port may emphasise packaging that has minimal impact on the environment without compromising on safety and security.

   c) The Port may include a requirement for the Ecomark Label to the extent feasible in their Description/ Specification of the goods being procured. The Government of India has promulgated the Ecomark Certification Rules, 2023 (hereinafter called the Ecomark Rules) for labelling environmentally friendly products that meet the approved environment criteria and to ensure environmental performance of such products w.r.t. resource efficiency, circular economy and environmental impacts, in particular the impact on climate change, the impact on nature and biodiversity, generation of waste, emissions to all environmental media, pollution through physical effects and use and release of hazardous substances, thereby supporting the principles of 'LiFE (Lifestyle for Environment)'. The objective is to encourage consumers to adopt such products and the manufacturers to transition to the production of Ecomark-certified products to promote sustainability. It shall be applicable to any product that is produced or supplied for distribution or use in the market unless otherwise excluded under the Ecomark Certification Rules. It would also prevent misleading information on the environmental aspects of products. Therefore,

   d) It should emphasize factors such as efficiency, optimum fuel/power consumption, use of environmentally friendly materials, reduced noise and emission levels, low maintenance cost, and so on.

      i) The government of India set up the Bureau of Energy Efficiency (BEE) (https://beeindia.gov.in/en) on March 1, 2002, under the provisions of the Energy Conservation Act, 2001, with the primary objective of reducing the energy intensity of the Indian economy. The Bureau initiated the Standards & Labelling Programme for equipment and

appliances in 2006 to provide the consumer with an informed choice about energy saving and, thereby, the cost-saving potential of the relevant marketed product.

ii) The scheme is invoked (https://beeindia.gov.in/en/star-label) for 34 equipment/appliances, out of which labelling is mandatory for 11 equipment/appliances, i.e., Frost-Free Refrigerator, Stationary Storage Type Electric Water Heater, Colour Television, Room Air Conditioner (RAC - Variable Speed; Fixed Speed; Cassette; Floor Standing Tower; Ceiling; Corner), TFL, LED Lamps, Distribution Transformer, Direct Cool Refrigerator, Ceiling Fan. The other appliances are presently under the voluntary labelling phase.

iii) The energy efficiency labelling programs under BEE are intended to reduce the energy consumption of appliances without diminishing the services they provide to consumers. The higher the stars, the more efficient the appliance is. The threshold ratings prescribed by the Ministry of Finance are:

Appliance – Threshold Star Rating

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

iv) The Port should try to build either the BEE Star rating, where applicable and minimum energy efficiency, where such star ratings are not yet available, into the TS (in accordance with *Rule 173 (xvii) of GFR 2017*). *Such benchmarking illustrates the use of neutral and dependable benchmarking in the procurement of sustainable, environmentally favourable goods by way of appropriately formulated Technical Specifications.* In a similar fashion, to implement sustainability goals, TS may include an Environmental Product Declaration (EPD) as defined by the International Organization for Standardization (ISO) 14025 as a Type III declaration that "quantifies environmental information on the life cycle of a product to enable comparisons between products fulfilling the same function". Voluntary environmental standards can also be used to specify environmental sustainability criteria.

9. **Discourage procurement involving evaluation of samples/ demonstration of Equipment:** According to the existing guidelines on public procurement of

goods, purchase in accordance with a sample or requiring demonstration of equipment should not be usually undertaken.

a) Calling for a sample along with the tender or requiring a demonstration of equipment after bid opening and deciding based on evaluation of the sample/ demonstration of equipment should NOT be done.

b) In certain specifications, there may be a built-in sample clause. Usually, such clauses are stipulated to illustrate indeterminable characteristics such as shade/tone, makeup, feel, finish, workmanship, and so on. In some specifications, there may not be a sample clause, but such indeterminable characteristics are left to be agreed to between the seller and buyer. One way to procure/indigenise certain spares whose drawings/specifications are not available is to procure in accordance with an available sample of the part. In such cases, the supply must conform to an agreed reference sample only, whereas the remaining characteristics must conform to the drawings/specifications.

c) However, no sample should be called for or evaluated along with the bids. If desired, three copies of the purchaser's reference sample with seal/ label may be displayed for prospective bidders to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/drawings. If required, in addition to the purchaser's reference sample,

the provision for the submission of a pre-production sample matching the purchaser's sample by the successful bidder(s) may be stipulated for indeterminable characteristics before giving clearance for bulk production of the supply. On placement of the contract, one of the copies of the purchaser's reference sample may be given to the contractor for preparing pre-production sample/ supplies, one copy to the consignee for matching with the pre-production sample/ supplies and one should be kept secure under lock and key in the sample room of the Port. The Indent for items that are to be procured in accordance with a sample must be accompanied by three sealed reference samples as far as possible. Please refer to para 5.3-3-(g) and 7.4.2-3 for further details.

d) If a demonstration of equipment (say entirely newly developed equipment) is considered necessary, it may be planned only during the pre-bid stage, but the evaluation of tenders should not be based on this.

2.2.2 Essential Technical particulars

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

1. Scope of supply and end use of the required goods;

2. All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship, and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
3. Drawings;
4. Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
5. Requirement of a pre-production sample, if any, at the post-contract stage before bulk production;
6. Specific requirements of preservation, packing and marking, if any;
7. Inspection procedure for goods ordered and criteria of conformity;
8. Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
9. Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales service, and Annual Maintenance Contract (AMC) requirements, if any;
10. Warranty requirements;
11. Qualification criteria of the bidders, if any,
12. Any other aspects peculiar to the goods in question, such as the shelf life of the equipment, and so on.

2.3. Obtaining Sanctions/ Approvals and signing of Indents.

Obtaining Technical, Administrative and Budgetary Sanctions/ Approvals and signing of Indents.

Port may lay down a schedule of powers for administrative and budgetary approval of indents generated for the procurement of goods (Please refer to Annexure 4 for suggested Structure of SoPP). Before granting such approvals, it should be certified that funds in the budget are available and liability for this indent is noted against the total available budget. In case the delivery schedule is urgent (or shorter than the usual lead time), an urgency certificate should be recorded to justify the urgency. The indenting authority may submit an indent in the form of a Purchase Requisition

(Annexure 5) to the Port, giving it adequate time for procurement. Indentors should monitor the progress of the Indents they submit. For this purpose, a register may be maintained in the format provided in Annexure 6. On receipt from the procuring authority, the progress of such Indents should be monitored, and a register may be maintained in the format provided in Annexure 7.

2.4. Need Assessment - Risks and Mitigations

Need Assessment and Technical Specification - Risks and Mitigations

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

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

Risk-3

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

Mitigation-3

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

Risk-4

Need Description/ Specifications involving subjectivity: Procurements, where samples are asked to be submitted along with the offer and the evaluation, are based on the subjective evaluation of samples – which may lead to allegations of corruption.

Mitigation-4

If required, a stock sample for indeterminable parameters, such as shade/tone, size, makeup, feel, finish, and workmanship, may be displayed during procurement to which the offers must conform. If necessary, provide for submission of a pre-production sample by the successful bidder(s) before giving clearance for bulk production of the supply. (para 2.2.1.9)

Risk-5

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

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

Mitigation-5

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

2.5. Procurement Planning

2.5.1 Planning the Procurement

1. **Publish the Annual Procurement Plans:** The Port shall publish information regarding the planned procurement activities for the forthcoming year or years on the Government e-Marketplace (GeM), GeM-Central Public Procurement portal and website/e-procurement portal used by the Port with a caveat that such publication shall not be construed as an initiation of a procurement process and cast any obligation on the Port to issue the tender document or confer any right on prospective bidders. (Rule 144 (x), GFR 2017).
2. After receipt of the Indent, the Port should make the following decisions to initiate procurement to ensure conformity to the Procurement Guidelines:

a) Within 10 (Ten) working days of receipt of the indent from the user Department, the procuring authorities should critically review the description and TS enclosed with the indent for completeness/approvals/funding, VfM and possibility of the widest competition and seek clarifications from the indenting officer, if needed, before initiating such procurement;

b) **Reassessment of the quantity and Packaging/ Slicing of Requirement**:

i) The procuring authority shall normally neither package nor divide its procurement or take any other action to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand (*Rule 157 of GFR 2017*).

ii) Provided that in the interest of efficiency, economy, timely completion or supply, wider competition, or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages or club requirements of other users for procurement.

iii) Packaging of the contract and procurement planning should be done while keeping in view the market conditions and availability and the possibility of eliciting the interest of the qualified firms, effective competition for the type and size of the contract, and access to MSEs. An exceptionally large value package contract may restrict competition to big firms.

iv) Some requirements, e.g., IT Systems, may have elements of Goods, Works, and Services. It could be either sliced into separate Goods, Works and Services elements or combined into a single package.

v) In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/ Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and VfM considerations;

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

d) Selection of a Tendering System (single/two stages; single/two bids; suitability for e-procurement or reverse auction);

e) Select the mode of procurement (open tenders, limited tenders, single tenders, and so on);

f) Decisions on the timeframe for completing various stages of procurement from the date of issuing the tender to the date of issuing the contract, which should be declared in the pre-qualification/ bidder registration or tender documents. (Rule 144(ix), GFR 2017).

g) The Port should endeavour to adhere to the time limit, so decided and recorded reasons for any modification of such limits.

h) An integrated annual procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the Port and the market and to co-ordinate matching procurements of Goods, Works, and Services for a project;

i) **Mitigating Cartel Formation**. Need Assessment and Procurement Planning is the main stage where this menace can be addressed effectively:

   i) Inadequate competition, due to an inadequate number of suppliers in the list/ panel of registered suppliers:

      1) New firms may be encouraged to register themselves for the subject goods.

      2) A review of technical specifications (especially tailor-made specifications) may be done to examine why a commercially available alternative cannot be used instead, or at least review its features so that more suppliers become eligible. Consider using substitute items or new developments in the Market.

   ii) Processes, e.g., pre-bid conferences (where a considerable number of competing bidders come together on a platform), may facilitate such cartel formation. This may be avoided as far as feasible or be held only virtually. However, a pre-bid conference may be advantageous in case of turnkey contract (s) and sophisticated and costly equipment, large works, and complex consultancy assignments, as detailed in para 5.2.3 and pre-bid conferences must be done wherever necessary.

   iii) Tendering similar quantities with similar conditions, year on year, provides a stable conspiring environment for the bidders to come to an agreement for quoting prices and quantities. Therefore, the

following action can be considered to vary quantity and conditions to make it difficult for cartels:

1) Change the mode of procurement - OTE instead of LTE, or GTE instead of OTE; or bypass the pre-qualification stage and vice versa.

2) Change the quantity to be procured by packaging/slicing the tendered quantity or by clubbing more than one similar item in a tender (or vice versa).

3) Change the pre-qualification criteria, especially in the case of slicing/ packaging, to broaden the target bidders.

3. **Strategizing Large Procurement:** Large procurements warrant strategies to achieve competition and VfM. Large procurements require the application of mind during need assessment, cost estimation and procurement planning, where the blind application of rules may not bring VfM. Formal market research can reveal important parameters of the market that can be used for designing optimal procurement strategies (alternative methods of procurement, slicing/ packaging, mitigating cartels, optimising various features/ specifications of the item) to maximise VfM and competition. Some of the market parameters to look for are:

a) **Total Production Capacities and total demand** for the item in the country and abroad. Is there an unbalanced demand/ supply?

b) **Volumes of procurement:** How significant is our requirement vis-à-vis the market? Would clubbing demands increase bargaining power? Can we collaborate with another large public-sector buyer? Has there been a recent major procurement that may constrict available capacity?

c) **Level of competition** – location-wise number of suppliers, co-ordination/ cartelization among them, major suppliers/ buyers controlling the market

d) **Supply chain constraints**, Raw materials bottlenecks, logistics, geopolitical issues.

e) **Specifications and variations**: patents, manufacturing processes, pollution, and other legal restrictions, etc. Should we tinker with specifications to get VfM?

f) **Pricing Trends**: Seasonality of prices, is it the appropriate time to enter the market?

2.5.2 Procurement Planning - Risks and Mitigations

Risk-1

Packaging, bundling, and slicing of requirements are done to avoid open competition or reduce competition. Or it is too large to make it difficult for MSEs to participate. Possible clubbing/collaboration among different units having the same needs has not been explored.

Mitigation-1

Lay down a clear policy for packaging and bundling of requirements. In large packages, the affordability of EMD and resultant restriction on competition may be kept in view, and bidders may be allowed to bid for slices of the package by depositing proportional EMD.

Chapter-3

Supplier Relationship Management

3.1. Supplier Relationship Management

Supplier Relationship Management comprises the following functions:

1. Ensuring compliance of suppliers to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Tender Documents;
2. Removal from the list of registered suppliers and debarment of firms;
3. Development of new sources and registration of suppliers.

3.2. Code of Integrity for Public Procurement (CIPP)

Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Port involved in procurement and the bidders/ suppliers must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement in registration applications and in tender documents, with a warning that, in case of any transgression of this code, it would be liable for punitive actions as detailed in sub-para (3) below. (Rule 175 of GFR 2017)

1. **Code of Integrity for Public Procurement:** Procuring authorities, as well as bidders, suppliers, contractors, and consultants, should observe the highest standard of ethics and should:
    a) **not indulge** in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or the execution of resultant contracts:
        i) **"Corrupt practice":** making offers, solicitation or acceptance of a bribe, rewards or gifts or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
        ii) **"Fraudulent practice":** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained, or an obligation avoided. This includes making false declarations or providing false information for participation in a procurement process or to secure a contract or in the execution of the contract;

iii) **"Anti-competitive practice":** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Port, that may impair the transparency, fairness, and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;

iv) **"Coercive practice"**: any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process or affect the execution of a contract;

v) **"Conflict of interest" (COI)**: any personal, financial, or business relationship between the bidder and any personnel of the Port who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the Port directly or indirectly.

vi) **"Undue Advantage"**: improper use of information obtained by the bidder from the Port with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder (or his allied firm) provided services for the need assessment/ procurement planning (inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc) of the tender process in which he is participating;

vii) **"Obstructive practice":** materially impede the Port's investigation of a procurement process either by deliberately destroying, falsifying, altering; or by concealing evidence material; or by making false statements or by threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to such investigation or from pursuing the investigation; or by impeding the Port's rights of audit or access to information;

b) **Proactively disclose*,** whether asked or not, in a tender document:

i) Procuring authorities, as well as bidders, suppliers, contractors, and consultants, should suo-moto proactively declare any Conflict of Interest as per sub-para-(a)-(v) above – pre-existing or as soon as these arise at any stage in any procurement process or execution of a contract. Please also refer to para 5.2.2-3 below.

ii) Bidders must declare any previous transgressions with respect to the provisions of subclause a) above with any entity in any country during the last three years or of being debarred by any other Port. iii) The bidder/contractor must disclose any commissions or fees that may

have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution of the Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee in a format given in the Tender Document.

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

2. **Punitive Provisions:** Without prejudice to and in addition to the rights of the Port to other penal provisions as per the tender documents or contract, if the Port concludes that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Port may take appropriate measures including one or more of the following:

a) **if his bids are under consideration in any procurement**

i) Forfeiture and/ or encashment of bid security

ii) calling off any pre-contract negotiations and;

iii) rejection and exclusion of the bidder from the procurement process

b) **if a contract has already been awarded**

i) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Port;

ii) Forfeiture and/ or encashment of any other security or bond relating to the procurement;

iii) Recovery of payments, including advance payments, if any, made by the Port along with interest thereon at the prevailing rate;

c) **Provisions in addition to the above**:

i) Removal from the list of registered suppliers and/ or debarment of the bidder from participation in future procurements of the Port for a period not less than six months;

ii) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer with the Competition Commission of India;

iii) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

3.3. Integrity Pact

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

2. Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) should incorporate the Integrity Pact (OM No.14(12)/ 2008- E-II(A) dated 19th July 2011) in the procurements/ contracts of the nature and of a threshold value, decided by the Ministries/ Departments with the approval of the Minister in charge. As guidance, the threshold should cover bulk (80-90% - eighty to ninety percent by value) of its annual procurement expenditure. The format of the Integrity Pact is included in Annexure 30. The Port may make suitable changes in the format, wherever required based on the specific situation, in which pact is to be used. The pact may also be updated, wherever necessary, to incorporate latest procurement instructions.

3. CVC issued a revised Standard Operating procedure (vide CVC Circular No.04/06/23 (015/VGL/091 dtd 14/06/2023) and has further stated (vide CVC Circular No.06/05/21 (015/VGL/091 dtd 03/06/2021) that in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector Insurance Companies (PSICs) and Public Sector Financial Institutions (FIs) shall also adopt and implement the suggested format of Integrity Pact. Please refer to Annex-2 of Annexure 30 for details.

3.4. Grievances and its Redressal:

1. Port shall provide a suitable clause in their Tender Documents for the redressal of grievances of bidders. The following is a suggested mechanism of redressal:

2. Any supplier, contractor, or consultant that claims to have suffered or is likely to suffer loss or injury as a result of a decision/ action/ omission of the Procurement Entity may make an application for its review within a period of Five (5) days from its date, to the designated officer named in the tender documents in this regard (or the Head of the Port, if not so specified), specifying the ground(s) and the relevant clauses of the tender documents. Unsuccessful Bidders may seek de-briefing regarding the rejection of their bid, in writing or electronically, within Five (5) days of the declaration of techno-commercial or financial evaluation results.

3. Only a directly affected bidder can represent in this regard:

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

b) In case the 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 who has qualified in the pre-qualification bid;

c) In case the technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

d) The following decisions of the Port in accordance with the provision of internal guidelines shall not be subject to review:

   i) Determination of the need for procurement;

   ii) Selection of the mode of procurement or tendering system;

   iii) Choice of selection procedure;

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

   v) Provisions limiting the participation of bidders in the procurement process in terms of government policies. vi) Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government

   vi) The decision to enter into negotiations with the L1 bidder;

   vii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;

   viii) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed; all such issues should be highlighted before the vendor/contractor consummates the contract.

4. This grievance redressal is beside the avenue of complaints to the vigilance department of the procuring organisation.

5. If received during the processing of the tender, the designated officer shall forward the application to the TC/Convener of TC for its examination on merits and action as considered necessary. An interim reply may be sent that the application will be kept in view in the tender evaluation, and a final response shall be given only after the declaration of the award of the contract. The Tender Committee shall place the application on record, including its analysis and action taken thereon, in the TC minutes/ report to the Competent Authority. After the

award, the TC convener shall respond to the aggrieved party as per sub-para 5) below.

6. If such grievance is received after the declaration of the award of the contract, the designated officer shall forward the application to the Competent Authority of the tender for his examination on merits and action as considered necessary. Such post award grievance must be redressed and closed within 30 days of receipt of the grievance. If the Competent Authority finds the complaint to have substance, appropriate and feasible remedial measures should be initiated as per sub-pra (5) or (6) below.

7. If the grievance is resolved or if the grievance is found to be unwarranted, the aggrieved party shall be informed by the TC convener of the final decision without disclosing confidential details.

8. Based on such representation, if the Competent Authority is satisfied that there has been a contravention of procurement guidelines in this case, he may initiate such action as, in his opinion, is necessary to rectify the contravention, including:

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

   b) Annulment or reconsideration of the procurement proceedings;

   c) cancellation of the resultant procurement contract, if legally feasible;

   d) In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the conduct rules.

   e) In case the complicity of any bidder is proved,

      i) removal of the concerned firm from the list of registered firms
      ii) debarment of the bidders, if warranted
      iii) reporting the matter to the Competition Commission of India (CCI) in case of anticompetitive actions by the bidder.

   f) Handing over the case to CVO if there are aspects that require investigations.

3.5. Conduct of Public Servants in Public Procurement - Risks and Mitigations

Risk-1

Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.

Mitigation-1

Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.

Risk-2

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

Mitigation-2

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

Risk-3

Private Purchases from Official Suppliers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates (especially from Rate Contract holders).

Mitigation-3

Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers, or service providers with whom they have official dealings, including seeking or accepting special facilities or discounts on private purchases (particularly the same items that are being ordered officially on rate contracts).

Risk-4

Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/ she is personally not benefitted, it would not be a violation of CIPP.

Mitigation-4

Public purchasers must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/ service providers including soliciting

of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

Risk-5

Conflict of Interest (COI), Code of Integrity for Public Procurement has a provision that defines Conflict of Interest as:"

"...any personal, financial, or business relationship between the bidder and any personnel of the Port who are directly or indirectly related to procurement or execution process of the contract, which can affect the decision of the Port directly or indirectly....."

There may be dilemmas regarding the officers related to the tender or execution process and, even if minor, routine transactions.

Mitigation-5

Interpretation of Conflict of Interest would depend on the organisational structure and its unique circumstances and cannot be laid down universally. However, some illustrative examples are given below to provide context.

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

b) As an illustration - COI (actual, potential, or perceived) can arise if such officers (or his close family) have:

   i) Substantial business interests in the firm (e.g., shares more than 0.1% of market cap), taken a loan or other financial obligation (say discounts) from the firm or its personnel), etc.

   ii) Business relationships with the firm - say previously worked for the firm or availed hospitality/ gifts beyond the limits laid down in the Code of Conduct of the organisation, etc.

   iii) Familial relationship with the personnel of the firm.

   close personal friendships or regular (say, more than once in a quarter) social interactions (e.g., clubs, games, social associations) with the Firm's personnel, etc

   Note: For purpose of COI, Firm includes its allied firms also. Firm's personnel for this purpose, shall mean – senior executives (or team handling the bidding) at the bidding firm. Close family for this purpose shall be officer's spouse, parents, children, and their families. As far as extended family - Siblings/ Uncles/ Aunts/ Cousins and their families are concerned, the situation would depend on closeness of relationships and whether the officer would in normal course be aware of their activities

c) **Resolution of COI**: It shall be the responsibility of such officials to declare COI (to the extent he is aware of, in normal course) with reference to a procurement process to the Competent Authority/ next higher officer. The competent officer may evaluate the level of COI and the sensitivity of the function assigned to the official. He may either determine

i) COI is insignificant enough to influence the type of function performed by the official and ask the officer to continue his function.

ii) If COI or the type of function is significant, nominate any alternative officer to perform the function (partly or fully) of this official in that procurement process

3.6. Development of New Sources and Registration

Empanelment/ Pre-qualification of Firms

Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification. Detailed Procedure is given in Appendix-GM-S2/A10)

3.7. Debarment of Suppliers

Registration of suppliers and their eligibility to participate in Port's procurements is subject to compliance with Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 specified the circumstances regarding the 'Debarment from Bidding' (Refer Appendix GM-S2/A11)

3.8. Enlistment of Indian Agents

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

Chapter-4

Modes of Procurement

4.1. Modes of Procurement

1. Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a *balance between the need for the widest competition, on the one hand, and the complexity, time, effort, and cost of the procedure, on the other hand.* Different modes of procurement are used to suit various procurement circumstances to achieve this balance. Various modes of procurement vary the extent of competition (width and specificity of catchment area of bidders) to suit different procurement situations. *Mode of Procurement addresses the 'Right Source' of the 5Rs.*

2. There are laid down delegation of powers to approve different modes of procurement to various competent authorities. The Port may also publish its own Schedule of Procurement Powers (SoPP) delegating such powers within the entity. A suggested format for SoPP is given at Annexure 4.

3. The various modes of procurement that can be used in public procurement are (GFR 2017- Various thresholds for these Modes of procurements have been revised upwards vide PPD's OM No. F.1/3/2014PPD dt. 10.07.2024):

a) **Advertised Modes**: These modes of procurement aim for the widest possible competition through wide publicity (Rule 161 GFR 2017):

   i) Open Tender Enquiry (OTE, also known as National Competitive Bidding – NCB, or simply Advertised Tender Enquiry, but this manual would stick to OTE);

   ii) Global Tender Enquiry (GTE, also known as International Competitive Bidding – ICB, but this manual would stick to GTE)

   iii) Rate Contracts

   iv) Electronic Reverse Auction (eRA) - Dynamic Price Discovery

b) **Pre-Qualification Modes:** These modes of procurement are restricted to shortlisted pre-qualified bidders. *The shortlisting is done transparently, based on qualification criteria to identify bidders who have the capability to perform the contract. Shortlisting itself is done through wide publicity akin to advertised tenders.*

   i) Pre-Qualification Bidding Mode (PQB)

   ii) Approved Vendor Lists (AVL)

c) **Restricted Modes**: These modes of procurement are restricted to known, selected bidders. *Unlike the Pre-qualification mode, the shortlisting is not based on rigorous qualification criteria through wide publicity. The shortlisting/ registration of bidders is based on less rigorous checks of capability and past experience. (Rule 162, GFR 2017).*

i) Limited Tender Enquiry - LTE (up to Rs. 50 (Rupees Fifty) lakh);

ii) Special Limited Tender Enquiry (SLTE above Rs. 50 (Rupees Fifty) lakh under exceptional circumstances)

d) **Nomination Modes**: Procurement in these modes of procurement is done from a single source in special circumstances. (Rule 166 GFR 2017)

i) Proprietary Article Certificate (PAC);

ii) Single Tender Enquiry (STE) without PAC

e) **Shopping Modes**: Procurement in these modes of procurement is done without tendering or calling for formal bids for small value procurements. (Rule 154, 155 GFR 2017)

i) Direct Procurement without Quotation;

ii) Direct Procurement by Purchase Committee;

4.2. Open Tender Enquiry (OTE)

1. In Open Tender Enquiry (OTE), an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money, but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.*

2. OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:

a) Procurements exceeding the threshold of Rs. 50 lakhs (Rupees Fifty Lakh);

b) All requirements with clear technical specifications;

c) For requirements that are ordinarily available in the open market, it is necessary to evaluate competitive offers to decide the most suitable and economical option available and

d) When requirements are not available from known sources or sources are presently limited and need to be made broad-based. In such situations, even for procurements below Rs. 50 (Rupees Fifty) lakhs, the OTE mode may be used if warranted (Rule 161 of GFR 2017).

4.2.1 Terms and Conditions

1. There should be no restriction on participation by prospective bidders who meet the eligibility criteria. Especially prior registration with the Port should not be insisted upon. However, bidders who are already registered are also free to participate.
2. Advertisements in such cases should be given on the Government e-Marketplace (GeM) as well as on GeM- Central Public Procurement Portal (CPPP) at www.eprocure.gov.in. Port should also post the complete tender document on its website and GeM- CPPP to enable prospective bidders to make use of the document by downloading it from the website. The advertisements for the tender invitations should give the complete web address from which the tender documents can be downloaded. While it is no longer mandatory to issue advertisements in newspapers, there is no bar to issuing such advertisements if the Port consider them necessary. To promote wider participation and ease of bidding, no cost of tender documents may be charged for the tender documents downloaded by the bidders.;
3. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/made available for download up to the last date of tender submission.
4. The tender documents should be prepared based on the relevant approved Model Tender Document for the procurement category. Further details on preparing tender documents are provided in Chapter 5.
5. In offline tenders, the Port shall maintain proper records about the number of tender documents sold, the list of parties to whom sold, details of the amount received through sale, and the number of unsold tender documents, which are to be cancelled after the opening of the tenders.
6. In domestic tenders, bids can be submitted only in INR, and any bid in foreign currency should be summarily rejected. Foreign bidders can also participate if they submit a bid in INR. However, purchase preference for local content as per the PPP-MII shall apply.
7. In the case of domestic open tender for projects (including turnkey projects), allowing consortium bidding, a foreign bidder can be a consortium member, subject to the condition that the consortium as a whole meets the minimum local content criteria, as per the Make in India Order, 2017. The leader of the consortium can be a foreign party, and the bids are to be solicited in Indian Rupee only, i.e., no payment can be made in foreign currency to the foreign consortium member.

4.2.2 OTE - Risks and Mitigations

Risk-1

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

a) Insufficient publicity;

b) Hindrances in the availability of tender documents;

c) insufficient time for bid preparation or

d) Due to the onerous cost of tender documents or EMD

Mitigation-1

i) It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders. All registered Consultancy firms (in particular past successful Firms) should be given intimation about forthcoming tenders via email.

ii) Further, a limited or open tender that results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval, etc.

iii) It should also be ensured that there is no impediment to the issue/access of tender documents.

iv) Ordinarily, the due date fixed for the opening of the tender shall be a minimum of 21 (twenty-one) days from the date of advertisement, which may vary, considering the nature of the material called for and delivery requirements. The due date may be subsequently extended with the approval of the Competent Authority only if it is felt necessary to have better competition.

v) The tender documents if at all priced, shall be priced minimally, keeping in view the value of the tender as well the cost of preparation and publicity of the tender documents.

vi) EMD should be sufficient to ensure that bidders honour their bids but, at the same time, should not be large enough to reduce competition.

Risk-2

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

Mitigation-2

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

4.3. Global Tender Enquiry (GTE)

GTE is like OTE, but through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. Subject to restriction on GTE (para 4.3.2 below), GTE can also be in SLTE, LTE or STE mode if justified with proper approvals as per SoPP. *The point of balance between VfM and the cost/ complexity of the procedure is further aggravated as compared to OTE. The development of local industry also needs to be kept in mind.* Hence, it may be viable only in the following situations:

a) Where Goods of required specifications/quality may not be available within the country, and alternatives available in the country are not suitable for the purpose, it is necessary to also look for suitable competitive offers from abroad;

b) Non-existence of a local branch of the global principal of the manufacturer/ vendors/ contractors;

c) Requirement for compliance to specific international standards in technical specifications;

d) Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among Indigenous bidders. (Rule 161 of GFR 2017)

4.3.1 Terms and Conditions

1. Advertisements in such cases should be given on the Government e-Marketplace (GeM) as well as on GeM- Central Public Procurement Portal (CPPP) at www.eprocure.gov.in. The Port should also post the complete tender document on its website and on GeM- CPPP to enable prospective bidders to make use of the document by downloading it from the website. The advertisements for the tender invitations should give the complete web address from which the tender documents can be downloaded. To promote wider participation and ease of bidding, no cost of tender documents may be charged for the tender documents downloaded by the bidders.;
2. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/made available for download up to the last date of tender submission.
3. The tender documents shall be priced minimally (if at all priced, refer to para 5.2.1 Availability and Cost of Tender Documents), keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;

4. GTE tender documents must be in English and must contain technical specifications that are in accordance with national requirements or else based on an international trade standard. (Please refer to para 2.2.1-4)

5. In Global Tender Enquiry, e-procurement may not be mandatorily insisted upon.

6. The due date fixed for the opening of the tender shall be a minimum of four weeks from the date of advertisement, which may vary considering the nature of the material called for and the time required to prepare the bids. The due date may be subsequently extended with the approval of the Competent Authority to promote better competition and also considering the delivery requirement.

7. Relevant INCOTERMS (presently 2020 version) should be included in the tender.

8. **Currency of Bidding:** In GTE (Global Tender Enquiry), foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies such as US Dollars, Euros, Pound Sterling, Yen, other relevant currencies (The Central Board of Indirect Taxes and Customs in India (CBIC) issues Exchange Rate Notification under Customs Act, 1962, which lists currencies and exchange rates for imported goods in Schedule I – which may indicate relevant currencies for indicate. The current notification is Exchange Rate Notification No. 30/2024 - Customs (N.T.) or a combination thereof. However, prices for goods works, or services (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees. Indian bidders are required to quote in INR only. During the evaluation, all quoted prices are converted into Indian Rupees as per the procedure mentioned in para 7.5.2-1.

9. **Agency Commission:** The amount of Agency Commission (normally not exceeding five per cent) payable to the Indian Agent (who shall provide self-attested documentary evidence about their identity and business details to establish that they are a bonafide business and conform to regulations) should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the financial bid) between the bidder and the Indian Agent. Agency commission shall be paid by the Port in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Goods and Spares. 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 Port 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 debarred from having business dealings with the Port, following laid down procedures for such debarment of business dealings.

10. **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy (Ministry of Shipping's No. SC-18013/ 1/2013-ASO-I Dtd 08/09/2015) of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on a 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)/ CFR (Cost & Freight)/ CIF (Cost, Insurance & Freight)/ Delivery Duty Paid (DDP at named place) basis. All importing Government Departments/ PSEs can now make their own shipping arrangements without needing to route their requirements through the Chartering Wing of the Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through an Indian carrier, wherever applicable.

11. **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 as 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 covered under insurance should be sufficient to cover the overall expenditure incurred by the purchaser for receiving the goods at the destination. Insurance for imported goods/equipment would need to be arranged very carefully and only for cases where the value of individual shipments is expected to be more than Rupees five crore. Port with substantial import contracts may arrange "Open Cover (all Risk)" annual insurance for all imports during the year with insurance companies instead of insurance for each import separately. Where delivery of imported goods is required by the Port on Cost Insurance and Freight, Carriage and Insurance Paid, Delivery Duty Paid (CIF/CIP/ DDP) basis, the supplier shall arrange and pay for marine/air insurance, making the Port the beneficiary. Where delivery is on a Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the Port's responsibility.

12. Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Customs Assessable Value' plus the 'Basic Customs duty applicable thereon.' Foreign bidders shall indicate the break-up of prices for freight, insurance, customs duty, port handling charges, clearing agency charges, related ITC (HS) code, IGST/ GST cess, and related HSN code, as relevant to the quoted price basis.

4.3.2 Restrictions on Global Tenders up to Rs 200 Crores

1. No Global Tender Enquiry (GTE) shall be invited up to Rs. 200 crores or any limit as may be prescribed by the Department of Expenditure from time to time.

2. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE for tenders below such limit (including those in SLTE/ LTE mode or on a Single Tender basis), it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.

3. Before sending the proposals for approval of the Global Tenders, the following is to be ensured: -

   a) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered, etc.

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

4. **Exemptions/ Clarifications:** Exemption for floating GTE even up to Rs. 200 Crores has been provided for the following procurements. It is emphasized that these exemptions are only from restrictions on GTE, and the local content preferences and other features of MII policy (refer to para 1.11.3) would still be applicable:

   a) GTEs for procurement of ICT items, software and hardware such as Blade Servers, SAN storage, LAN switches, Mobile testing devices, Cloud Orchestration & system software, Network & web APTs, mobile testing tools, Integrated Backup System (IBS) etc. can be issued with the approval of Board. (Notified vide OM No. F.4/1/2022-PPD issued by Department of Expenditure dated 29.08.2022).

   b) Procurements on a nomination basis as no competitive tenders are invited in the following cases inter-alia, including:

      i) On procurement of spare parts (For this purpose, 'Spares' shall be taken to include consumables for such equipment). of the equipment/ Plants & Machinery, etc., on a nomination basis from Original Equipment Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) (Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021).

ii) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipment/ Plant & Machinery, etc., which are procured from OEM/ OES/ OPM on a nomination basis (Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021).

c) It is further clarified that:

i) The machine system includes spare parts and accessories which may be procured by the Port together or separately.

ii) Port may frame the detailed technical specifications for the above devices as per their requirement.

5. **Guidelines for resorting to GTE**:

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

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

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

6. **Certificates to be issued**:

a) Certification that locally available alternatives with equivalent specifications are not suitable for the purpose.

b) Certification of the requirement of proprietary items of foreign origin for (where applicable).

4.3.3 GTE - Risks and Mitigations

Risk-1

Risks are the same as in OTE

Mitigation-1

The same mitigation as in the case of OTE also applies here.

Risk-2

The involvement of foreign bidder agents in GTE procurements is also a major risk area.

Mitigation-2

Procurements should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal directly could bid in a tender, but not both. Further, in cases where agents participate in a tender on behalf of one manufacturer, they should not be allowed to quote on behalf of another manufacturer

along with the first manufacturer. Commissions and scope of services to/by the agents should be explicit and transparent in the bids/contracts.

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

1. **Definition:** A Rate Contract (commonly known as RC) is an agreement between the Port and the Supplier for the supply of specified goods (and allied services, if any) at a set price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. RC is most frequently used in the procurement of goods but can also be used mutatis mutandis in works, services, and consultancy – where it is commonly known as a Framework Agreement (FA). No quantity is mentioned, nor is any minimum drawable quantity guaranteed in the Rate Contract. The Rate Contract is a standing offer from the supplier firm. The firm and/or the Port are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other, giving suitable notice (say thirty days. However, once a supply order (also called withdrawal order) is placed in terms of the rate contract, during the validity period of the rate contract on the Supplier for the supply of a definite quantity, that supply order becomes a valid and binding contract.

2. **Items amenable to Rate Contract:** The following types of items can be advantageously procured through rate Contracts:

   a) Goods that are regularly or repetitively required by more than one department of the Port

   b) The quantities required cannot be accurately forecast.

   c) Individual requirements of the departments may be small, but the total aggregate requirements of all the departments are more than Rs 50 Lakhs per annum.

   d) The item has detailed specifications, drawings, and descriptions.

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

   f) Items are not scarce/critical/'perpetually in short supply' goods or services.

   g) Demand for the item is not seasonal since Rate contract holders may shy away from supplying the item during high seasonal demands and dump supplies during low demand season.

   h) Spares used for maintenance of expensive equipment/machines, from OEMs to facilitate uninterrupted supply of genuine spares.

3. **Merits of Rate Contract:** The Rate Contract system provides numerous benefits to both the Port (i.e., user) and the Supplier as indicated below:

a) **The benefit to Users**:

i) Competitive and economical price due to aggregation of demands.

ii) Saves time, effort, person-hours, and related costs involved in the time-consuming and repetitive tender process. It thus reduces lead time for procurement.

iii) Availability of quality goods with full quality assurance backup.

iv) Enables procurement as and when required and thus reduces inventory carrying cost.

v) It is advantageous even to small users and those located in remote areas.

vi) Provides one single point of contact to procure such items.

b) **Benefit to Suppliers**:

i) Reduces marketing costs and efforts.

ii) Eliminates repetitive tendering and follow-up actions with multiple authorities.

iii) Provides single-point contact for Port supplies.

iv) Aggregation of Port's demand leads to economic production.

v) Improves the credentials of the company.

vi) Promotes quality discipline.

4.4.1 Terms and Conditions

1. **Conclusion of Rate Contracts**, including Parallel Rate Contracts

a) The Port can enter a rate contract for items amenable to the Rate Contract for its various departments' use. No indents are required to enter a rate contract; only an estimate of the annual requirements of different ultimate users is needed. Inspection and testing of such goods or services, wherever required, may be arranged by the department entering into the rate contract. The department entering the Rate Contract should post the descriptions, specifications, prices and other salient details of the entire rate contracted goods or services, appropriately updated, on its website for use by the various departments.

b) Rate contract enquiries should preferably be through eProcurement or Open Tender Enquiry, but Limited Tender Enquiry/ Single Tender Enquiry can also be used if justified by the nature of the requirement. Specific special terms and conditions (please refer to sub-para 4.4.1-3 below; MTD for Goods also has these provisions) for the Rate Contract should be added to the Tender Documents.

c) Performance against earlier/current rate contracts of past/ current rate Contract holders shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date are to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their bids) to enable the Port to judge their performance and achievement against the past/current rate contracts.

d) Procedures stipulated in Chapter 7 for evaluation of bids and award of contract shall be applicable mutatis mutandis in the finalisation of rate contract, including provisions for negotiations/ counter-offer and splitting of contracts (parallel contracts). Please refer to para 7.5.3 for the evaluation of Rate Contract tenders.

e) 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., parallel rate contracts may be awarded to more than one (preferably at least three) Supplier. For transparency and to avoid criticism, all such parallel rate contracts are to be issued simultaneously, as far as feasible.

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

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

a) The Port may prescribe the amount of Bid Security in the Tender Document.

b) No quantity is mentioned in the Schedule of Requirement; only the anticipated drawable quantity is mentioned without commitment.

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

d) The purchaser and the Supplier may short-close the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen to thirty days.

e) The Port can renegotiate the price with the rate contract holders, even during the validity, if market conditions change significantly or undertake

repeat competitive bidding through open/ advertised tenders on the same terms and conditions, including specifications during the validity period of existing valid R/Cs. In such cases, the existing R/C holders can bid, apart from the new eligible bidders, and equal and fair opportunity would be provided. If the prices received are found lower than the existing R.C. prices, new R/Cs may be awarded at reduced prices and existing R/Cs at higher prices may be short-closed, giving adequate notice if they do not match such reduction in prices under the fall clause.

f) In an emergency, the Port may purchase the same item through an adhoc contract with a new supplier.

g) The Port and the authorised user departments of the rate contract are entitled to place supply orders up to the last day of the validity of the rate contract, and though supplies against such supply orders will be delivered beyond the validity period of the rate contract, the terms & conditions of the rate contract will guide all such supplies.

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

   i) Export/Deemed Export by the Supplier;

ii) Sale of goods or services as original equipment prices lower than the price charged for routine replacement;

iii) Sale of goods (such as drugs) which have expiry dates;

iv) Sale of goods or services at lower prices –

1. on or after the date of completion of placement of order of goods by the Port, under the existing or previous Rate Contracts

2. under any previous contracts entered with the Central or State Government Departments, including new undertakings (excluding joint sector companies and/or private parties) and bodies.

i) The Rate Contract holder shall furnish the following certificate to the concerned Paying Authority along with each bill for payment of supplies made:

" I/We certify that there has been no reduction in the sale price of the goods of description identical to the goods supplied under this contract and such goods have not been offered/sold by me/ us to any person /organisation including the Port or any department of Central Government or any as the case may be up to the date of bill/ the date of completion of supplies against all supply orders placed during the currency of the Rate contract at a price lower than the price charged under the contract."

4. **Performance Security:** Depending on the anticipated overall drawable annual quantity against a rate contract and the anticipated number of parallel rate contracts to be issued for an item, the Port may consider obtaining Performance Security (@ 3% to 5%) as per para 6.1.2 below of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

5. **Placement of Supply Orders**:

a) Procuring officers nominated in the Rate Contract can place supply/ withdrawal orders in terms of the rate contract during the validity period of the rate contract on the Supplier for the supply of definite quantities. An indent with required administrative and financial approvals is required before a supply order can be placed. Alternatively, the department of the Port managing the Rate Contract can centrally administer the placement of withdrawal orders against indents from the constituents.

b) Once a Rate Contract is available, all nominated Procuring officers must mandatorily procure the item only through supply orders on the rate contract holders. In case of an emergency, if Port directly procures rate contracted goods or services from the suppliers, the prices to be paid for such goods or services shall not exceed those stipulated in the rate contract, and the other salient terms and conditions of the purchase should be in line with

those specified in the rate contract. However, they may be permitted to procure a small value of their requirements directly (say up to Rs. One Lakhs at one time and not more than Rs 5 lakhs annually) following relevant procedures.

c) The Port may stipulate an upper threshold of value for supply orders received against the rate contract by the RC holder. Except with prior approval of the Port, the Contractor shall not comply with the supply orders received from the procuring officers exceeding such threshold amount.

d) All parallel RCs for an item, even at differential rates, are assumed to be at reasonable rates. The Port can select any RC holder, following transparent and equitable criteria. For selecting the one rate contract holder in case of parallel Rate Contracts for ordering, the following factors may be kept in view:

   i) The rate contract price.

   ii) The past performance of firms with reference to their capacity, quality of supplies as well as timely delivery of the goods. Procuring department should maintain suitable records for past performance with respect to timely delivery and quality.

   iii) There is a need for reputed brands in the case of sensitive, critical, and vital requirements.

   iv) The proximity of the rate contract holder where proximity is considered crucial for timely delivery, ease of progressing and from the point of view of logistics and contract management, etc.

   v) The delivery dates committed by various Rate Contract holders with respect to the delivery requirements of the Port.

e) In rate contracts, if the time for delivery is not fixed by mutual agreement, it is not the essence of the contract and is not binding on the supplier. Therefore, no liquidated damages can be levied for non-supply or delay in supply against such orders. That being so, under section 46 of the Contract Act, the goods are only to be delivered within a reasonable time- which is a rather vague concept. But where there has been an unreasonable delay in delivery, the Procuring officer has the right to give the Contractor notice, fixing a reasonable time for delivery of the goods and stipulating that delivery within the time specified shall be the essence of the contract. If the goods are not delivered within this period, the supply order can be cancelled by the Procuring department that finalized the Rate Contract (since he alone, not the user department, is a party to the Rate Contract), and deficient performance is noted for future Rate contracts.

f) However, in cases where the delivery date stipulated in the relevant order has been expressly agreed to by the supplier in writing before placing the relevant order, liquidated damages can be recovered (by the Procuring department that entered into rate Contract) from the supplier on account of delay in delivery beyond the stipulated delivery date, provided the procuring department that finalized the Rate Contract has not in any way interfered with the supplier's discretion to meet the said supply order by directing the supplier to give priority to some other supply orders. Therefore, it is advisable that, before placing the supply order on a rate Contract holder, a commitment is obtained from him for the delivery period.

g) Before creating the supply order, approval of the Competent Authority (depending on the value of procurement) may be taken by submitting information about all the available parallel RCs and justifying the selection of a particular RC holder.

h) A supply order should generally contain the following essential details:

i) Rate Contract No. and date;

ii) Quantity. (Where there is more than one consignee, the quantity to be despatched to each consignee is to be indicated.);

iii) Price;

iv) Date of Delivery by which supplies are required. (In the supply order, a definite delivery date based on the delivery period stipulated in the rate contract is to be provided),

v) Provide the full address of the Procuring department along with the telephone number. No., Fax No., and e-mail address;

vi) Complete and correct designation and full postal address of the consignee(s)/goods receiving officer(s) along with telephone No., Fax No., and Email address;

vii) Nearest Railway Siding (NRS) of the consignee(s), if applicable;

viii) Despatch instructions;

ix) Designation and address of the inspecting officer, if any;

x) Designation and address of the paying authority to which the Supplier will raise the bills. Copies of supply orders are to be endorsed to all concerned.

6. **Renewal of Rate Contracts:** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case it is not possible to conclude new rate contracts for some special reasons, timely steps are to be taken to extend the

existing rate contracts with the same terms, conditions, etc., for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms who do not agree to such extension are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

4.4.2 RC - Risks and Mitigations

Risk-1

A rate contract is not the right mode of procurement for critical, strategic, and vital requirements since the buyer-seller relationship is tripartite, and the timely supply of requirements and penalties thereof cannot be strictly enforced as in other modes of procurement.

In situations where items have inadequate annual or seasonal capacities in the market, the RC holders may dump material on the Port during the wrong seasons and starve them during working seasons. This happens in, say, cement, when government buyers are likely to be saddled with huge supplies during the rainy season, but RC holders may divert the bulk of supplies to the private market during the working season.

RC Purchase is not suitable for requirements of dynamic Technological and price changes,

e.g., PCs, Laptops, Tablets, Servers, and Mobile Phones – where the price of older models may crash as soon as a new model is announced. RC holders may slow down supplies initially but dump suppliers when prices crash in the market.

Mitigation-1

RCs may be avoided for critical/ strategic and vital requirements.

For seasonal and short-supply items, Port may monitor and provide clauses to prevent dumping and starving of supplies.

In technologically fast-changing products, the Port may keep an eye on market prices and renegotiate them as soon as market prices fall significantly due to new arrivals.

Risk-2

The existence of RCs may not be adequately made known to possible users. Moreover, the reverse risk is that many different offices may keep procuring the same item independently, thus missing the potential benefits of bulk prices and simplified processes if such items were brought under an RC.

Mitigation-2

The descriptions, specifications, and other salient details of all RCs should be appropriately updated and made available on the Port website as well as the eProcurement portal. The e-procurement system should be able to offer alerts about the availability of RC if an attempt is made to float a tender for the same item. To derive benefit from bulk prices in RC, all offices should furnish to the RC nominated department their annual requirement of items to enable the finalising of RCs after inviting quotations.

Risk-3

RC procurements are at risk of being ordered more than actual requirements since the procurement scrutiny may not be as intense as in the case of other modes of procurements.

Mitigation-3

The quantity being ordered should be subject to the same level of scrutiny as in other modes of procurement to ensure that there is no abnormal, unexplainable trend in procurement.

Risk-4

Wherever there are parallel RCs for the same item from several firms, there may be intense and often unhealthy lobbying (including corrupt practices) from them to seek orders.

Mitigation-4

Port must put in place adequate guidelines to handle RC procurements, including a transparent system of choosing the RC holders by rotation in a transparent manner in case of parallel RCs. Suggested criteria are given in para 4.4.1-5-(d). The delegation of powers in this regard should also be restricted, keeping these risks in view.

The Port should maintain suitable records of RC firms for past performance with respect to timely delivery and quality.

Wherever there are failures against the rate contract in terms of timely delivery and quality of goods, such failures should be reported to the department that entered the Rate Contract, and direct alternate procurement action may be taken to ensure the timely availability of quality materials to meet the needs of the Port.

4.5. Dynamic Price Discovery - Electronic Reverse Auction (eRA)

1. Electronic Reverse Auction (e-RA, a type of auction classified as a dynamic procurement mode) is an online real-time purchasing technique used to select a successful bid. eRA is an iterative process with automatic evaluation of bids, where bidders can offer successively more favourable bids to displace the lowest bid at any given moment within the duration of the eRA. The starting price, minimum bid decrement, duration of the auction, and the maximum number of automatic extensions are announced before the start of the online reverse auction. If a new lower bid is received within the last few minutes (pre-announced, say five minutes) of closing time, the closing time may get automatically extended by a few minutes (pre-announced, say ten minutes) for others to respond. A maximum number of such extensions may be pre-announced (say 50). The most favourable bid at the end of the stipulated/ extended time is declared as successful. It has, however, to be ensured that the entire process is conducted transparently and fairly.

2. Electronic reverse auctions can be a powerful tool for procuring goods and services, but they also come with potential risks and drawbacks. Here are some reasons why caution is advised:

   a) **Quality and Supplier Relationships**: In an electronic reverse auction, the focus is on price, and suppliers may be forced to cut corners to win bids, affecting the overall quality of the product or service. Additionally,

aggressive bidding can strain supplier relationships, leading to long-term negative effects.

b) **Value for Money**: While reverse auctions can drive down immediate costs, they may not optimise value for money. Factors like total cost of ownership, lifecycle costs, innovation, reliability, sustainability, and strategic alignment may get overlooked.

c) **Lack of Technology Development**: Suppliers may hesitate to invest in innovation or process improvements if they are constantly pressured to lower prices. This can hinder long-term competitiveness and limit the introduction of new technologies or ideas in hi-tech goods and services.

d) **Risk of Supplier Dropouts**: Aggressive bidding can lead to suppliers dropping out of the market segment, reducing competition. If critical suppliers exit, it can disrupt the supply chain and impact availability.

3. Thus, while electronic reverse auctions can drive cost savings, they should be used judiciously, considering the broader implications beyond price alone. Therefore, eRA should not be used indiscriminately or as a default mode of procurement. Port may choose procurement of goods that are amenable to procurement by this mode of procurement as per the following guidelines:

a) **A reverse auction would be appropriate where**:

i) Items are commodities, Commercially-off-the-shelf items;

ii) it is feasible to formulate a detailed description of the subject matter of the procurement;

iii) there is a competitive market of bidders (say more than five) 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 Port in determining the successful bid are quantifiable and can be expressed in monetary terms;

b) **Where caution is needed in using Reverse Auction**

i) In the case of repetitive/ regularly procured items, future procurements may be affected, as there may not be the same type of price reduction in future procurements as in the first Reverse Auction. Port may face a situation of not being able to justify the higher rates received subsequently or

ii) Where it is proposed to issue parallel orders by splitting the total order quantity among more than one supplier, a reverse auction may be avoided. However, in such a case, if the reverse auction is resorted to, then there should be adequate suppliers available, i.e., if the quantity is to split into N parts, then suppliers available should be at least N+3.

c) **Reverse Auction would not be appropriate for**:

i) The requirement is not of high enough value to generate competitive pressures on bidders.

ii) Items of strategic/ critical/ vital/ high technical complex nature, items that are in short supply in the market, or

iii) Where the QCBS system of selection is used (wherever permissible in case of Consultancy, Non-consultancy Services or Works); or

iv) Where FBS (Fixed Budget Based Selection) system of selection is used in Consultancy Services wherein the only parameter for evaluation is quality/ technical criteria or

v) In Engineered products having complexity in design; or

vi) EPC contracts and complex Works contracts, or

vii) Items where there are only a few suppliers.

4. Terms and conditions:

a) Subject to more detailed guidelines in the category-specific manual or organizational variations, the procedure for electronic reverse auction shall include the following:

i) In stand-alone eRA, the Port shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with provisions like e-procurement. The invitation shall, in addition to the information as specified in e-procurement, include details relating to:

1. Access to and registration for the auction;
2. Opening and closing of the auction;
3. Norms for the conduct of the auction;
4. Any other information that may be relevant to the method of procurement.

ii) If the consideration of quality requires competition only among qualified bidders, eRA may be preceded by a stage of PQB (on the same platform as eRA) to shortlist qualified bidders, who would only be allowed to participate in the eRA process that follows.

iii) Port may combine a full two envelope eProcurement process with Reverse Auction (Tender cum e-Reverse Auction). Then, after an eProcurement process, the e-Reverse Auction process is mandatorily conducted.taking the L1 price as the benchmark (upper limit), after the financial bid opening (declaration of L-1 landed price/ s), provided the

number of valid bidders is not less than a stipulated number (3 if not specified).

iv) In such a combined procedure, unless otherwise stipulated, the following procedure shall be followed for elimination/ shortlisting of bidders (from among those qualified in the preceding eProcurement process) eligible to participate in eReverse Auction:

1) The bids disallowed from participating in the Reverse Auction(e-eRA) shall be the highest bidder(s) in the tabulation of prices in the financial bid. If the highest bidders quote the same rate, the Price Offer received last, as per the time log of the Portal, shall be removed first, on the principle of last in, first out by the system.

2) If the number of valid bidders is less than the minimum stipulated number (or 3 if not specified), a Reverse auction shall not be conducted, and the financial bids from the eProcurement process shall be evaluated and finalised. In the case of 4 to 6 valid bidders, the lowest three (3) bidders shall be allowed to participate in the reverse auction. In the case of more than 6 valid bidders, only 50% of the bidders (rounded up to the next integer) shall be allowed to participate.

3) However, if MSE bidders or Class-I Local suppliers under the Make in India policy do not meet the above criteria but their prices in financial bids are within the policy's margin of preference, they shall be allowed to participate. Such bidders would be over and above the shortlist mentioned above.

b) **E-Reverse Auction Process**: If the Portal e-RAP process is different from the one described below for the combined procedure (sub-para (e) and (f) above), the portal provisions shall prevail.

i) There shall be no participation fees for the e-Reverse auction.

ii) Where pre-qualification precedes the eRA, an electronic invitation shall be issued, giving sufficient notice period to the successful bidders, so that they can formulate pricing strategies. The starting price shall be decided by the Port.

iii) In case of combined procedure (sub-para (e) and (f) above), upon opening the financial bids, a reverse auction platform shall be created. The reverse auction shall start within the specified period (two hours if not specified) of the bid. Unless modified by the Port, the L-1 landed price in the financial bid (as per the calculation schema based on the Tender Document evaluation criteria) shall be the start bid price on which the auction shall be initiated.

iv) The Port shall specify the decrement value before starting the eReverse Auction (or, if not specified, 0.5% of the start bid price rounded off to the next unit, tens, hundreds, thousands, etc., with a minimum of Rs. 1). The reduction in bids shall have to be made as per decrement value or in multiple thereof. A bid decrement that is too small may prolong the auction, and a decrement that is too large may restrict competition.

v) An initial period of the reverse auction shall be as stipulated (or two hours if not specified). All times and periods are as per the server time stamp. In case a reduction in price is recorded in the stipulated last-minute-bidding-period (five minutes, if not so specified) before the auction closing time, there shall be auto extensions of time by a specified auto-extension period (ten minutes if not specified). The Maximum number of auto extensions shall be as stipulated (or 50 if not stipulated). The last-minute-bidding period should not be so small that unscrupulous bidders may catch others off guard, preventing competitive responses. The auto-extension period should be sufficient to allow bidders to consider their next move. The number of auto-extensions should not be too large to prolong the auction, leading to bidder fatigue.

vi) In case of service disruption at the service provider's end during the reverse auction, the reverse auction process shall start all over again, with the last recorded lowest price of prematurely ended e-RAP as the 'Start bid' price. The prices quoted in the prematurely ended e-RAP shall be binding on all the bidders for consideration if the restarted process does not trigger within the stipulated time (or by 5.00 pm on the same day, if not stipulated). Disruption and restarting of e-RAP shall be intimated to all the bidders through system/ SMS/ e-mail through the eprocurement portal.

vii) Bidders must submit only the landed price in the reverse auction, and only the item wise L-1 price shall be displayed without disclosing the number of bids and names of the bidders. The landed price would not be the same for two bidders, even if any bidder makes such an attempt. While evaluating the bids, the exchange rate captured by the e-procurement system shall be considered for converting foreign currency into Indian Rupees.

viii) After the auction's closing time, the bid history showing all the last valid bids offered, along with the names of the bidders, shall be published. All bidders shall have the facility to see and get a print of the same for their records.

ix) All electronic bids submitted during the reverse auction process shall be legally binding on the bidder. Only the chronologically last bid submitted by Bidder until the end of the auction shall be considered the valid financial bid of Bidder, and consideration of the same for entering into a contract by the Port shall be binding on the bidder.

x) In case of combined procedure, If a bidder does not submit his bid in the Reverse Auction, the price quoted in the financial bid in the preceding eProcurement shall be considered the valid price of that bidder. The status of the Bidder (L-1, L-2, etc.) shall be evaluated considering either the bid price submitted in the Reverse auction, or the Price quoted in the financial bid, whichever is lower.

xi) Purchase Preference: Short-listed (MSE or Class-I Local suppliers), eligible for any purchase preference policy as per the Tender Document, shall get an opportunity to match the L-1 prices concluded after the reverse auction if their final prices in the Reverse Auction fall within the permitted percentage.

xii) There shall not be any negotiation after the e-reverse auction process is closed.

xiii) The successful L-1 bidder, after the reverse auction, must upload within a stipulated period (within 2 working days, if not specified) the breakup of Landed Prices in the shortfall documents, at which the contract shall be awarded. While giving the breakup, the Bidder shall include the same taxes and duties as quoted while submitting the financial bid. If the L-1 bidder fails to submit the breakup of the landed price within the stipulated period, the Port shall place an order based on the breakup of the financial bid submitted by the Bidder, and the same shall be binding on the bidder.

xiv) The Port shall monitor whether there is improper use of the reverse auction, including, for example, evidence of predatory pricing, collusion, interference with the proper operation of the technology, etc. Bidders (including their subsidiaries) found to have engaged in collusive activities or other improper practices will be treated in accordance with para 7.6.8. (Rule 167 of GFR 2017)

4.6. Pre-qualification Modes of procurement

Where the procurement is significantly complex, and the capability of the source of supply is crucial, for the successful performance of the contract, it may be necessary to ensure that there is competition only among bidders equally capable of performing the contract and incapable bidders don't queer the pitch by their low quality/ low price bids. In such a situation, a pre-qualification of bidders may be required to shortlist

bidders who are equally capable of performing the contract. Evaluation of Techno-commercial and Financial bids is restricted to this shortlist only.

4.6.1 Pre-qualification Bidding (PQB)

1. In situations mentioned above, where the time, effort and money required from the bidder to participate in a tender is high, a two-phase pre-qualification bidding may be considered. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness, and maintenance of competition. Although there is a separate phase of PQB bidding, it's not semantically counted as a two-stage bidding.

2. In the first PQB phase, competent, qualified bidders are shortlisted by using a Prequalification Criterion (PQC covering - i) past experience of similar contracts, ii) performance capability and iii) financial strength). No Techno-commercial or Financial details are asked for in the first phase of PQB. In the second phase, tender documents (Techno-commercial and Financial) are issued as usual through e-Procurement/ e-Publishing; bids only from shortlisted qualified bidders are evaluated, and others are rejected.

3. **Where PQB is not Desirable**: Since the two phase PQB system may strain the transparency principle and there is a heightened risk of Anti-competitive practices, two phase PQB should be done only as an exception under specified circumstances. *Hence, the Port may lay down restricted powers to approve such modes at sufficiently high levels in SoPP.* It should not be a routine/ normal mode of procurement of goods, and qualification criteria as part of a single/ two/ multiple envelopes system should suffice in such situations. PQB bidding as a separate phase is contraindicated in the following circumstances:

   a) Where procurement is being done through limited tender enquiries;

   b) Where the requirement is technically and commercially not complex enough that prequalification of the bidder is not crucial for the performance of the contract, for example, Commercial Off -The Shelf (COTS) requirements;

   c) Where the procurement is significantly complex and the time, effort and money required from the bidder to participate in a tender is not significant, clear-cut, fail-pass pre-qualification criteria can be specified in single-stage tendering (instead of two phase tendering) as per para 4.6.2 below.

4. **Pre-qualification Criteria:** PQC should be unrestrictive enough not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher procurement/works/services prices. 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. A sample PQC is given in Annexure 12. Due

consideration should be given while framing PQC to its effect on the adequacy of competition. PQC should not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible beyond what is essential for ensuring the quality or creditworthiness of the supplier. To encourage MSEs, Local Bidders and past successful bidders, a call may be taken as to whether PQC should apply to full quantity/ packages or be proportional to part quantity/package quoted by a bidder. In case the requirement is suddenly multiple times the past procurements, blind adoption of past PQCs (fractions/ percentages) may lead to the disqualification of successful past vendors leading to inadequate competition. PQC should, therefore, be carefully decided for each procurement with the approval of Competent Authority 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.

5. **Advertisement and Notification:** The invitation for the first phase PQB shall be processed (advertised, tender document preparation, publicity, evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criteria should be clearly noted 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 3 weeks (4 weeks in case foreign bidders are also involved) may be allowed for the submission of PQBs. In the case of urgency duly approved by Competent Authority, the time limit may be reduced to 10 (ten) days.

6. **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 pre-qualification criteria (PQC), as far as reasonably feasible, from the parties for whom work has been claimed to be done. The Port 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.

7. **Subsequent Procurement Tender:** The pre-qualification shortlist shall be for a single subsequent procurement. In this subsequent procurement, bids are invited from these qualified bidders only, and all other bids may be treated as unsolicited offers, which are normally rejected. This second phase of the procurement process is handled as a normal two-envelope tender. The time gap between the pre-qualification approval and the floating of the linked main procurement tender should normally be less than six months.

4.6.2 Single Stage Pre-qualification:

1. In the situation described in para 4.5 above, i.e., significantly complex procurement, the capability of the source of supply is crucial, the necessity to

ensure competition only among equally capable bidders, but where the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate phase of Pre-Qualification bidding, a clear-cut, fail-pass Pre-Qualification Criteria can be asked to be submitted as the first (additional) envelope in a single-stage three envelopes system so that a bidder's risk of having his bid rejected on the grounds of qualifications is remote if he exercises due diligence. In eProcurement, separate files shall be uploaded by the bidder, mutatis mutandis.

2. Strictly speaking, this is not a pre-qualification but a post-qualification of bidders (i.e., after the techno-commercial and financial bids have been received). In respect of prequalification, in the first instance on the pre-announced bid opening date, only the PQB envelopes (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification.

3. The rest of the procedure is the same as the two envelope systems (Techno-commercial and Financial Bids) for only qualified bidders. In e-procurement, the other two envelopes of unqualified bidders would remain encrypted and unopened. In off-line tenders, the other 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;

4.6.3 PQB Tendering –Risks and Mitigations:

Risk-1

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

Mitigation-1

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

Risk-2

Dangers of Anti-competitive bidding: Since in a two-stage PQB, shortlisted bidders are announced, there is a heightened possibility of these bidders forming a cartel and quoting anti-competitive prices in the second stage of tendering.

Two-phase PQB is a time-consuming process.

Mitigation-2

Two-stage PQB should be done only in appropriately justified situations. Alternatively, a single-stage multiple envelope system may be used for prequalification, in which the chances of anti-competitive behaviour and cycle time are significantly lower.

Risk-3

Contentious and Disputes: Both the successful and unsuccessful bidders tend to view the 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.

Mitigation-3

In the PQC, a caveat against such tendencies may be included, asserting the right of the Port 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.

4.7. Approved Vendor List (AVL)

1. **Strategic, Safety and Security Requirements**: Ports have regular and continuous requirements of tailor-made items (for which the Port is the monopoly buyer), which are critical for the safety and security of its operations and where large investments and gestation periods are needed for developing manufacturing and quality control infrastructure/ processes for its production. In view of heavy investments, vendors need regular and sustained offtake for financial viability. Such procurement needs to be done over an extended period of time only from vendors who have undergone rigorous pre-qualification. The firms are assessed for requisite infrastructure to produce consistent quality goods up to the assessed production capacity with regular monitoring of the quality assurance system. It may even involve, if required, extended field trials of products and inspection of manufacturing/ quality assurance facilities and processes. Such time-consuming pre-qualification would not be feasible for each individual procurement. An example is the requirement for Railway Signalling equipment, Locomotive assemblies, and Track fittings. A quality glitch in these would be disastrous.

2. **Approved Vendor Lists:** In such situations, a separate phase of PQB tendering is done with a much more stringent PQC, but the resultant shortlist of qualified vendors is kept valid for an extended period (Say 2 to 5 years) as stipulated in the PQB documents. These are called Approved Vendor Lists (AVL). *In some countries, these may be referred to as multi-use lists.*

3. **Categories of Approved Vendors**: There may be gradation in the category of Approved vendors. The initial category may be called "Developmental Vendors" (may be named as 'Temporarily or Provisionally Approved Vendors' in some organisations), where approval is granted based on an assessment of infrastructure facilities available and satisfactory production of samples as per specification, but their capability to consistently produce the quality material giving satisfactory service life in the field, is yet to be established. After these Development Vendors demonstrate a capability to produce consistent quality

Goods with required service life over a period (say 2 years), they are upgraded to the regular category of "Approved Vendors".

4. **Procurement Restricted to AVL:** In all subsequent procurements, eligibility criteria restrict participation to the "Approved Vendor List" (Regular and Developmental), and all other bids are treated as unsolicited offers, which are normally rejected. Only a part (say not more than 20%) of the total tendered quantity is distributed among Development Vendors, provided they quote lower than the regular Approved Vendors. The rest of the quantity (say 80% or more) is awarded to 'Approved Vendors'. This ensures that Development Vendors are able to demonstrate their capabilities for upgradation to the regular Approved Vendor Category. Thus, it should be ensured that development orders are for a viable quantity for production and for the purpose of proving their capability.

5. **Benefits of AVL:** An AVL is a powerful tool that contributes to cost control, reliability, and overall efficiency in procurement for strategic, safety and security Goods. It ensures that vendors have undergone rigorous vetting and have demonstrated stability and reliability. Working with approved vendors instils confidence in the quality of materials and components purchased and reduces the chances of defects. Downtime due to failures and repairs is also minimized.

6. **Monitoring and Updation**: An AVL is a dynamic tool, and its effectiveness depends on proactive management and adaptability. Updating an Approved Vendor List (AVL) over time is crucial to maintain its effectiveness and relevance. If a new vendor applies for inclusion in AVL, it may be added to AVL if it meets the PQC in the original PQB. Key performance indicators (KPIs) for vendors should be part of the PQB document, including on-time delivery, product quality, and responsiveness. These metrics may be used to conduct periodic reviews of the AVL (e.g., annually, or biannually) and vendors who consistently fail to meet standards or demonstrate poor performance may be downgraded or removed from the AVL. Audits of existing vendors may be conducted to assess financial stability, production capabilities, and adherence to contractual terms. The Port should monitor industry trends, technological advancements, and new suppliers. Feedback may be gathered from stakeholders who use or maintain the Goods. Their insights can highlight areas for improvement or identify potential issues with specific vendors. Vendors may be given support to enhance their capabilities and training, share best practices, and encourage continuous improvement.

7. **Where AVL is not Desirable**: The same contra-indications as in PQB mentioned in para 4.6.1-3 are much more accentuated in the case of AVL, as the list is used over prolonged periods. *Hence, the AVL mode for an item for should be approved at the highest level in the Port.* Since the AVL system strains the transparency principle and there is a heightened risk of cartelization and collusion, AVL should not be a routine/ normal mode of procurement of goods and should be done only as an exception under specified circumstances as mentioned in sub-para 1)

above, otherwise PQB modes of procurement (para 4.5) may be used. AVL is contraindicated in the following circumstances:

a) Where the requirement is not related to Strategic, Safety or Security.

b) Where the item is not tailor-made, nor is the Port a monopoly buyer.

c) Where the item is not regularly and continuously procured.

d) Where the requirement is technically and commercially not complex enough;

e) Where large investment and prolonged gestation period are not required in developing manufacturing/ quality assurance facilities/ processes.

f) Where the technology is not stable and is evolving/ changing at a fast pace.

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

4.7.1 Approved Vendor Lists –Risks and Mitigations: The same risks and mitigations as in para 4.6.3 apply in this case to a deeper level:

Risk-1

Dependency on Vendors: It can shift the balance of power to the hands of vendor – leading to many disadvantages:

i) **Anti-competitive Practices:** These Approved vendors can easily form a cartel and indulge in Anti-competitive practices

This includes a significant risk of collusion due to power in the hands of the Port's personnel who inspect/ monitor the facilities/ quality.

ii) **Cost Escalation:** Over time, vendor costs may increase, affecting overall procurement expenses.

iii) **Supplier Ethics and Compliance:** Approved vendors may engage in unethical practices or violate compliance standards.

Mitigation-1

Diversify the Approved Vendor List (AVL) by including multiple reliable vendors for critical goods. Maintain a backup list of Development Vendors to mitigate sudden disruptions. Regularly monitor and update the AVL as per para 4.7-6.

i) Be alert about cartel/ pool rates. Include a Cartel clause and take mitigation measures.

The personnel in such jobs may be rotated frequently and should not be allowed to be in the same position for more than 3 years. If the same personnel who created the AVL are also given the task of monitoring it, it may create a conflict of interest. So, personnel for these two tasks should be different. The KPIs and PQC should be objectively measurable.

Every three years a fresh PQB may be done for new vendors.

ii) Benchmark costs periodically against market trends. Negotiate long-term contracts with price stability clauses.

iii) Conduct due diligence on vendors' ethical practices. Include compliance clauses for the Code of Integrity in contracts and monitor adherence.

Risk-2

Lack of Monitoring and Updation: AVL is a dynamic tool that needs constant monitoring and updating to deliver the intended benefits while mitigating the associated risks.

i) **Complacency:** Once vendors are approved, complacency may set in, leading to reduced performance.

ii) **Quality Fluctuations:** Even approved vendors may occasionally deliver subpar quality due to production issues or changes in their processes.

Mitigation-2

Monitor and update the AVL lists (Refer to para 4.7-6).

i) Continuously engage with vendors, encourage innovation, and set improvement targets.

ii) Regularly audit vendors to ensure consistent quality.

Risk-3

Market Dynamics: Market dynamics (e.g., price fluctuations and technological advancements) impact vendor capabilities and competitiveness.

Innovation Gap: Sticking to the same vendors may hinder access to innovative solutions. A non-approved vendor offers an innovative solution that could significantly improve operations.

Mitigation-3

Stay informed about industry trends and adjust the AVL accordingly.

Encourage vendors to propose new technologies or approaches. Consider adding emerging vendors to the AVL. Evaluate the benefits and risks. Seek approval for a temporary exception or consider adding the vendor to the AVL.

Risk-4

Inadequate or Too-many Vendors on AVL: Both an inadequate number of vendors and too many vendors on AVL may be detrimental to the intended benefits of AVL. Too many vendors may force vendors to cartelise for survival – having invested heavily in creating infrastructure. Too few vendors may create supply chain disruption and increased prices.

Mitigation-4

Such situations may be specially monitored. In the PQB document, an upper limit may be indicated for the maximum number of suppliers to be taken on AVL. A large number of vendors getting cleared for AVL is an indication that this item is not a fit case for AVL

mode. In case of inadequate numbers on AVL, a repeat PQB may be done, and efforts may be made to induce new vendors with technological and preferential help in setting up infrastructure.

4.8. Limited Tender Enquiry (LTE)

LTE is a restricted competition procurement, where a preselected panel of vendors (on the list of registered suppliers for the subject matter of procurement) are directly approached for bidding for goods and services not available on the GeM portal. Bids from uninvited bidders are treated as unsolicited and are not entertained except in exceptional circumstances. However, Port should evolve a system by which requests for registration of interested/ unsolicited firms should be decided before the bid in the next round of tendering. *This mode provides a short and simple procedure but may not provide as good a VfM as in the case of open tendering, but it is still a good balance for procurements below a threshold. LTE procedures should be the default mode of procurement when the estimated value of procurement is between Rs. 5 lakh to Rs. 50 lakhs (Rupees Five Lakh to Fifty Lakh).* (Rule 162 of GFR 2017)

4.8.1 Terms and Conditions

1. The shortlist of vendors from the list of registered suppliers for the subject matter of procurement to whom it is proposed to send tender documents shall be approved by the competent authority before floating the tender.
2. In case the number of registered bidders for an item is large and unwieldy, a transparent system of rotation of invitation to bid may be used to keep the invited shortlist to a manageable number (say 8 to 12).
3. In the off-line tendering, copies of the tender documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to the panel of vendors on the list of registered suppliers for the subject matter of procurement. Further, the Port should also mandatorily publish its limited tender enquiries on GeM as well as on GeM- Central Public Procurement Portal (CPPP). Apart from GeM and GeM- CPPP, the organisations should publish the tender enquiries on their own website.
4. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with the approval of the Competent Authority, duly recording the reasons. Efforts should then be made to identify a higher number of approved suppliers by the Supplier Registration section to obtain more responsive bids on a competitive basis.
5. A simplified Tender Document with brief terms and conditions (Annexure 8) should be used instead of a detailed Tender Document. 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, which is applicable to such procurements, in addition to these brief "terms and conditions" in LTE tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

6. In domestic tenders, any bid in foreign currency should be summarily rejected.

7. Since selected bidders are normally registered with the Port, Bid Security and Performance Security are normally not taken in LTE.

4.8.2 LTE - Risks and Mitigations

Risk-1

A major risk in this mode is that the demand may be artificially split to avoid OTE or higher level approvals

Mitigation-1

The e-procurement portal may be programmed to raise an alert if the same item is repeatedly attempted to be procured through LTE.

Risk-2

There is a risk that LTE may not attract enough bids, and sometimes there may be a single acceptable offer.

It could be due to tender documents not reaching the targeted bidders – intentionally or otherwise.

It could also be due to bidders not getting adequate time to submit bids.

This could also be due to an insufficient database of registered/known vendors.

Mitigation-2

To ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered.

Sufficient time should be allowed for the submission of bids, say two weeks. A shorter or longer period, if considered sufficient for the submission of bids, could be allowed if justified according to the urgency/ complexity of the requirement.

Further, a limited or open tender that results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval, etc.

See para below for an insufficient database of vendors.

Risk-3

There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on the grounds of being ineligible/unreliable.

On the other hand, unsolicited bidders may also quote, causing a dilemma of transparency regarding the consideration of such offers.

Mitigation-3

Maintenance of a panel of registered suppliers for each subject matter of procurement is a sine-qua-non for LTE (Ref Rule 150 GFR 2017). Such panels of vendors should be reviewed every year to ensure an adequate number of registered suppliers.

The panel should not be changed after the LTE tender has been published. All past successful vendors/ bidders should invariably be invited. In case it is proposed to exclude any registered/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded, and approval of the Competent Authority should be taken before exclusion. Bidders should be selected with due diligence to ensure that bidders who do not meet eligibility criteria are not shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.

4.9. Special Limited Tender Enquiry (SLTE)

LTE mode is permissible in certain special circumstances for values higher than Rs. 50 lakh (Rupees Fifty Lakh) (*Rule 162 of GFR 2017*), where normally OTE should have been done. Powers to sanction procurement on an LTE basis in such exceptional cases may be laid down in SoPP based on a certificate of urgency signed by the indentor. *This mode has the merit of being quicker, but the VfM obtained may be less than in the case of OTE; hence, it should be restricted to the following situations*:

1. The competent authority in the Port certifies that there is an existing or prospective urgency for operational or technical requirements, and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Port should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
2. There are sufficient reasons to be recorded in writing by the competent authority, indicating that it will not be in the public interest to procure the goods through advertised tender enquiry.
3. The sources of supply are definitely known, and the possibility of fresh source(s) beyond those being tapped is remote.
4. Government policy designates procurement from specific agencies.

4.9.1 Terms and Conditions

1. The tender process would be the same as in the case of a normal LTE described above. However, the tender documents are more detailed, as in the case of OTE.
2. The indentor should certify that there is an existing or prospective urgency for operational or technical requirements and that any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view

of urgency. The indentor should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

3. In domestic tenders, any bid in foreign currency should be summarily rejected.

   a) Unlike LTE, Bid Security and Performance Security are taken in SLTE as in OTE tenders.

4.9.2 SLTE - Risks and Mitigations

Risk-1

Risks, as applicable in both LTE and OTE, are also applicable here. In addition, there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).

Mitigation-1

All mitigation strategies of LTE and OTE shall also apply here. In addition, the checks and balances systems should be tighter by way of enhanced and severely restricted delegation of powers for certification of urgency and approval of this mode of procurement. A system of reports from the authority signing the urgency certificate and post facto review of utilisation of received goods/works/services to tackle the expressed urgency may be laid down.

4.10. Proprietary Article Certificate (PAC) Procurement

In the procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC certificate (Annexure 9). This mode may be the shortest, but since it may provide lesser VfM than LTE/OTE and strains the transparency principle, it should be used only in justifiable situations. Such situations may arise on the following grounds *where a PAC can be certified*:

1. It is in the user department's knowledge that only a particular firm is the manufacturer of the required goods.
2. For standardization of machinery or components or spare parts to be compatible with the existing sets of machinery/equipment (on the advice of a competent technical expert)), or if it is a condition of the manufacturer's warranty that only OEM spares are to be used during the warranty period, the required goods are to be purchased only from a selected firm duly approved by the competent authority.
3. In case of specialised equipment and their spares/consumables may have to be procured from the same Original vendor (on the advice of a competent technical expert and approved by the Project in-charge), to maintain consistency/ reproducibility/ continuity of established/ standardized methods/ protocols to attain objectives of such projects. (Rule 166 i) and iii) of GFR 2017)

4.10.1 Terms and Conditions

1. Users should enclose, with their Indent, a PAC certificate signed by the appropriate authority as per DFPR/ SoPP with the concurrence of associated finance for sourcing an item from OEM or PAC firms or their authorised agents. Once a PAC is thus signed, the powers of procurement are the same as in normal conditions as per the delegation of powers.
2. Proprietary items shall be purchased only from a nominated manufacturer, or its authorised dealer as recorded in the PAC certificate;
3. In certain unavoidable cases, the Port may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis;

4.10.2 PAC - Risks and Mitigations

Risk-1

There is a risk that this mode may get used unjustifiably to restrict competition. Such risks get aggravated in case of secrecy about such procedures as alternative vendors/contractors may not even come to know about such opportunities

Mitigation-1

The delegation of powers should be restricted for signing the PAC. Even in PAC procurements, the NIT and the Award of Contract should be put on GeM- CPPP and Port websites.

Risk-2

Once approved, there is a risk of a nexus getting developed, and the mode may continue to be used for many years without fresh application of mind.

Mitigation-2

No item should be procured on a PAC basis for more than three years, after which a mandatory OTE mode may be used to test the market. The Port may also keep an eye on the GeM portal for other vendors who can supply such items.

Risk-3

The bidder may charge a price higher than the market

Mitigation-3

To the extent feasible, the PAC firm should be asked to accept a "fall clause" - undertaking that if it supplies or quotes a lower rate to other governments, the public sector, or private organisations, it shall reimburse the excess. If the price offered is not acceptable, negotiation as per provision of para 7.6.9 may be held with the PAC firm.

4.11. Single Tender Enquiry (STE) without a PAC

A tender invitation to one firm only without a PAC certificate is called a single tender. This mode may be the shortest, but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under the following conditions, where a PAC cannot be certified:

1. In the case of an existing or prospective emergency relating to operational or technical requirements to be certified by the indentor, the required goods are necessary to be purchased from a particular source, subject to the reason for such decision being recorded and approval of the competent authority obtained. (Rule 166 (ii) of GFR 2017)

4.11.1 Terms and Conditions

1. The reasons for an STE and selection of a particular firm must be recorded and approved by the Competent Authority as per the delegation of powers laid down in DFPR/SoPP prior to single tendering. Unlike in PAC, the powers of procurement of STE are more restricted,
2. Other terms and conditions of PAC procurement mentioned above would also apply in this case.

4.11.2 STE - Risks and Mitigations

Risk-1

The same but more heightened risks than PAC are present in this mode. The selection of a single vendor may be nontransparent and unjustified.

Mitigation-1

The same mitigation strategies as in the case of PAC should apply. Procurements on an STE basis should be made from reputed firms after determining the reasonableness of rates. The procurement powers for STE should be severely restricted.

4.12. Direct Procurement without Quotation

Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods with simple and standard specifications and when the required goods (of required specification or within the required delivery period, etc.) are not available on GeM (As stipulated in Department of Expenditure OM No. 6/1/2018-PPD dated 19.01.2018). However, for procurement outside GeM, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) (Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11.06.2021) with a unique ID on the GeM portal (please refer to para 4.17.2-8) using his login credentials on GeM for procurement outside GeM. *The procedure is the*

simplest and quickest, but VfM may be poor; hence, it is suitable only for low value, urgent and simple requirements in the following situations:

1. Procurements do not exceed the threshold (for each requirement) of Rs. 50,000 (Rupees Fifty Thousand) for each case;
2. The requirement is urgent but was not covered in the procurement plan.
3. The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are the day-to-day needs of the office and field units, and so on. (Rule 154 of GFR 2017)

4.12.1 Terms and Conditions

1. The competent officer of the Port can initiate and complete this purchase after diligent enquiries from the market and filling out the certificate prescribed (Annexure 10). Such powers, to a limited extent, can also be given to various user sections for operational needs.
2. Normally, an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned so that officers can handle such procurements. The imprest amount can be recouped on a monthly basis by submission of expense vouchers.
3. In a summary form, records should be kept of the vendors/contractors approached and the prices they indicate.
4. Selection of sellers by diligent market enquiry is of the essence of this mode of procurement.
5. In larger cities, reputed shopping malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

4.12.2 Direct Procurement without Quotations - Risks and Mitigations

Risk-1

The main risk is the splitting of demand to avoid higher approvals or higher modes of procurements.

Mitigation-1

Supervisors should carry out periodic reviews of such procurements to ensure that the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting approval from the higher authority required for sanctioning the purchase of the original demand or for avoiding LTE or OTE mode of procurement. An annual review of such procurements shall be carried out to ensure that future anticipated requirements are clubbed and procured through LTE/ OTE/ RC.

To keep better control, an annual ceiling may be fixed for each office for such a mode of procurement, say, Rupees five Lakh for each office per year. Each office should maintain records to monitor such limits.

Risk-2

Over a period, intentionally or otherwise, the due diligence of enquiries from the market may degenerate into a mechanical obtaining of quotations, leading to the development of nexus and crony suppliers. Vendor selection may be manipulated with fake supporting vouchers. Since such small value materials do not undergo accounting and inventory control, there is a risk of the development of a nexus, leakages, and fake procurements and payments. The same set of vendors may get patronised repeatedly for a wide variety of requirements. Since only cursory visual inspections are done, quality may be at risk.

Mitigation-2

Supervisors should cross-check a percentage of cases in the market for prices, fake vouchers, and so on. Supervisors should also check that the same vendor(s) is not being patronised repeatedly. For the sake of transparency, payments should be made by cheque or through Electronic Clearance Service, except that cash payment may be allowed up to Rs. 5,000 (Rupees Five thousand). Staff involved with such procurements should not continue in the same role for long and should be rotated frequently.

4.13. Direct Procurement by Purchase Committee

This mode of procurement is made by a local purchase committee consisting of three members of an appropriate level constituted by HoD. *This procedure is slightly more complex and is likely to provide better VfM than direct procurement without quotation; hence, it is suitable for marginally higher thresholds.* It is used in the following conditions:

1. For procurements valued above Rs. 50,000/- (Rupees Fifty Thousand) and upto Rs. 5,00,000/- (Rupees Five Lakh) only on each occasion.
2. Only in case when a certain item is not available on the GeM portal (of required specification or within the required delivery period, etc.) (As stipulated in Department of Expenditure OM No. 6/1/2018-PPD dated 19.01.2018). However, for procurement outside GeM, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) (Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11.06.2021) with a unique ID on the GeM portal (please see para 4.17.2-8) using his login credentials on GeM.
3. This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services. (Rule 155 of GFR 2017)

4.13.1 Terms and Conditions

1. The Port may lay down an annual ceiling value per office/unit for such procurements;

2. In case of emergency procurement, the facility for withdrawing the requisite advance cash amount and its subsequent account may also be considered.

3. This is intended to be a 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.

4. The selection of suitable products and suppliers by actual market survey (not by calling tenders like a mini-LTE) is the essence of this mode. Therefore, there is no question of obtaining quotations by email or otherwise. The committee shall survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. The survey may include online internet shopping portals, besides physical local market surveys. For organisations in smaller towns/hinterlands, surveys in nearby bigger cities/ Metros may also be included as part of the survey, depending on the ease of logistics.

5. Before recommending the placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 11).

6. The committee shall survey the market to ascertain the reasonableness of rate, quality, and specifications, identify the appropriate supplier, and jointly record a certificate before placing the purchase order.

4.13.2 Direct Procurement by Purchase Committee - Risks and Mitigations

Risk-1

Risks are the same as in the case of direct procurement without the quotation mentioned above, with mitigation due to the involvement of three members. Over a period, intentionally or otherwise, the due diligence of enquiries from the market may degenerate into a system of floating and obtaining limited tenders, leading to delays and the development of nexus and crony suppliers

Mitigation-1

Mitigation strategies are also the same as in direct procurement without quotation.

Chapter-4A

Tendering Systems

4.14. Tendering Systems

Tendering systems are designed to achieve an appropriate balance between the countervailing needs for the 'Right Quality' and the 'Right Price' (while the Mode of Procurement addresses the 'Right Source', and the Tender Document addresses the Right quantity and 'Right Time and Place') under different complexities/ criticality of Technical requirements and value of procurements. Depending on the complexity and criticality of technical requirements, as well as the value of procurement, the following types of tendering systems may be used. Please note that the selection of a Tendering System has to be based on the two factors mentioned above; hence, just a value threshold for their use is discouraged. Selection should be based on professional judgement of the two factors mentioned above.

The various Tendering Systems that are used in public procurement are:

1. Single-Stage Tendering System:
   a) Single Stage Single Envelope System
   b) Single Stage Two Envelopes System (Two Bid System) (*Rule 163 of GFR 2017*)
2. Two Stage Bidding - Expression of Interest Tenders – Market Exploration/ Short-listing *(Rule 164 of GFR 2017)*

4.15. Single-Stage Tendering System

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

4.15.1 Single Stage Single Envelope System:

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

4.15.2 Single Stage Two Envelopes System (Two Bid System) (*Rule 163 of GFR 2017*):

1. In technically complex requirements, but where the capability of the source of supply is still not critical, and the value of procurement is not high, a Single-stage two-envelopes system may be followed.
2. In off-line tenders, bidders should be asked to bifurcate their quotations into two separately sealed envelopes. The first envelope, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelope, called the financial bid, the price quotation, along with other financial details, are submitted. Both the envelopes are to be submitted together in a sealed outer envelope. In eProcurement, the bidder would be asked to upload two files, mutatis mutandis.
3. The techno-commercial bids are to be opened in the first instance on the pre-announced bid opening date and time 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.
4. Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a preannounced date and time for further scrutiny, evaluation, ranking and placement of the contract. In e-procurement, financial bids of technically non-compliant offers would remain encrypted and unopened. In off-line tenders, the financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery.

4.16. Two-Stage Bidding - Expression of Interest Tenders

Two-Stage Bidding - Expression of Interest Tenders – Market Exploration

1. In the case of green-field/ blue-sky projects, where the equipment/ plant to be procured is complex, the Port 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 and simultaneously ensures the upgradation of technology & capacity building- it would be prudent to invite an Expression of Interest (EoI) Bids as a first stage of the two-stage tendering system to explore the market and finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. In less complex cases, a

market consultation through a pre-NIT conference may suffice instead of two-stage tendering. (Please also refer to para 5.2.3-1).

2. **Expression of Interest (EoI) bids** may be invited in the following situations:

   a) It is not feasible for the Port to formulate detailed specifications or identify specific characteristics for the subject matter of procurement without receiving inputs regarding its technical aspects from bidders;

   b) The character of the subject matter of procurement is subject to rapid technological advances, market fluctuations or both;

   c) The Port seeks to enter into a contract for 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

   d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement. (Rule 164 of GFR 2017)

4.16.1 The procedure of Two-Stage Bidding

The procedure for two-stage tendering shall include the following, namely:

1. In the first stage of the tender process, the Port shall invite EoI bids containing the broad objectives, technical and financial qualification criteria, terms, and conditions of the proposed procurement, etc., without a bid price. On receipt of the Expressions of Interest, manufacturers/suppliers, which are prima facie considered technically and financially capable of supplying the material or executing the proposed work, shall be shortlisted.

2. Thereafter, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions, the Port may also add other stakeholders who could add value to the decision-making on the various technical aspects and evaluation criteria. A proper record of discussions/presentations and the process of decision-making should be kept.

3. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon by 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 to provide equitable opportunities to the prospective bidders.

4. In revising the relevant terms and conditions of the procurement, if found necessary because of discussions with the shortlisted bidders, the Port shall not modify the fundamental nature of the procurement itself;

5. In the second stage of the tender process, the Port shall invite only those bidders whose bids at the first stage were not rejected to participate in a two-envelope tendering in response to a revised set of terms and conditions of the procurement;

6. 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 tendering 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.

7. If the Port is of the view that after the EoI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage tendering 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 tendering may be performed. Such a variant of EoI is called 'Non-committal' EoI. Instances of 'Non-committal EoI' should be rare since it may de-incentivise the participants from giving a diligent/ sincere EoI. There should not be any bid-security requirement in such non-committal EoI.

4.16.2 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:

a) A copy of the advertisement;

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

c) **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if EoI is for empanelment), last date of submission, place of submission and any other related instructions;

d) **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;

e) **Qualification criteria:** The invitation to EoI should clearly lay down the qualification criteria that should be applied for shortlisting. The required supporting documents need to be clearly mentioned. An example of EoI

qualification criteria is shown in Table 1. However, appropriate qualification criteria must be designed, keeping in mind the specific objectives of the EoI.

4.16.3 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 shortlist should normally comprise at least four firms.

Table 1: An example of EoI Qualification 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 for the last three years		B1*
	Net profit figures for the last three years		B2*
Quality accreditations, licensing requirements		C*	
Manufacturing capabilities/ tieups		D*	
After-sales support infrastructure		E*	
Product support		F*	

* Weightage (out of 100) should be pre-decided and declared in EoI documents by the Competent Authority based on an 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.

Chapter-4 B

Channels of Procurement

4.17. Channels of Procurement

Public procurement can be performed through manual bids, eProcurement Platforms, GeM Portal, or third-party agencies.

4.17.1 Electronic Procurement (e-Procurement - Rule 160 of GFR 2017)

1. Electronic procurement (e-procurement) is the use of information and communication technology (specially the internet) by the buyer (through a third-party e-Procurement portal) in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory, and efficient procurement through transparent procedures. A generic description of how eProcurement is conducted is detailed in 'Appendix -GM-S2/3: Electronic Procurement (eProcurement) and e-Auction'.

2. It is mandatory for Ports to receive all bids through e-procurement portals that are GCQE (Guidelines for Compliance to Quality Requirements of eProcurement (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India). compliant for all procurements. This condition will not be applicable for the procurement made without quotation (under Rule 154 of GFRs, 2017) or through purchase committee (under Rule 155 of GFRs, 2017).

3. Normally, in e-procurement, no physical/ off-line tender documents are provided, nor are any manual bids accepted. It is not a good practice to call both electronic and manual bids.in the same tender. Sub-paras 4), 5) and 6) below allow exemptions in specific situations mentioned therein, from e-Procurement, in cases where it is not convenient or feasible.

4. In Global Tender Enquiry (by any mode – Open Tender, Limited Tender or Single Tender), e-procurement may not be mandatorily insisted upon; however, e-publishing would still be mandatory. (refer to para 4.3.1 above).

5. In individual cases where national security and strategic considerations demand confidentiality, Port may exempt such cases from e-procurement after seeking the approval of the Board.

6. The National Informatics Centre (NIC) has an e-Procurement portal called Government eProcurement of NIC (GePNIC). There are other service providers in the Public Sector (e.g., MSTC) and Private sector that can be utilized for e-procurement. Details about the process of e-procurement are available from the

service providers. *Appendix-GM-S2/A 3 also gives such generic details of the e-procurement process.*

7. If the Port do not have a large volume of procurement or carry out procurements required only for the day-to-day running of offices and have not initiated eprocurement through any other solution provided so far may use e-procurement solution developed by NIC.

8. These instructions will not apply to procurements made by Port through Government e-Marketplace (GeM).

4.17.2 Mandatory Procurement of Goods and Services through Government emarketplace (GeM) (Rule 149 of GFR 2017)

1. An online marketplace (or e-commerce marketplace) is a type of e-commerce site where several sellers offer products or services, and all the buyers can select the product/ services offered by any one of the sellers based on their own criteria. In an online marketplace, Purchaser's transactions are processed by the marketplace operator, and then products/ services are delivered and fulfilled directly by the participating retailers. Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting 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.

2. The Government of India has established the Government e-Marketplace (GeM) for common-use Goods and Services. The procurement process on GeM is end-to-end, from placement of contract orders to payment to suppliers. This is to ensure better transparency and higher efficiency. All the processes will be electronic and online. The Procurement of Goods and Services through the GeM portal by Ports is mandatory for Goods or Services available therein as per Rule 149 of GFR, 2017.

3. Products and services are listed on GeM by various suppliers, as on other e-commerce portals. Supplier registration on GeM is online and automatic based on PAN Card, Aadhaar Card, GST Certification, Bank Account and Financial Information, Corporate Registration Documents (Udyam registration for MSEs), VAT or TIN Number, Proof of Address, Contact Details, etc. Suppliers offer their products on GeM, and government buyers can view and compare all the products.

4. **Demand Aggregation:** The best prices for a user can be available if the same requirements and 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 government departments can be clubbed together, and

reverse auction can be done based on aggregate demand, which will provide the best prices to the government. Department.

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

6. ***"Government e-Market Place (GeM):*** GeM SPV (Special Purpose Vehicle) will ensure adequate publicity, including periodic advertisement of the items to be procured through GeM for the prospective suppliers. Suppliers' credentials on GeM shall be certified by GeM SPV. The GeM portal shall be utilized by the Government buyers for direct online purchases as follows:-

a) Up to Rs.50,000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period.

Note 1: In the case of automobiles, direct procurement under this sub-para is permitted without any ceiling limit.

Note 2: In case the item is available on GeM, it is not permitted to purchase the same under Rule 154 of the GFR, 2017.

b) Above Rs.50,000/- and up to Rs.10,00,000/- through the GeM Seller having the lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs. 10,00,000/-.

Note 1: In case the item is available on GeM, it is not permitted to purchase the same under Rule 155 of the GFR, 2017.

c) Above Rs. 10,00,000/- through the supplier having the lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.

d) 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 the terms and conditions of GeM.

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

f) The Port shall work out their procurement requirements of Goods and Services on either "OPEX" model or "CAPEX" model as per their requirement/suitability at the time of preparation of Budget Estimates (BE)

and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.

g) It may be noted that it is the responsibility of the Port to do due diligence to ensure the reasonableness of rates. The government buyers may ascertain the reasonableness of prices before placing an order using the Business Analytics (BA) tools available on GeM, including the last purchase price on GeM, the department's own last purchase price, etc.

h) 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."

7. **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.

8. **Uploading of Non-availability Report:** It is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) (Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June 2021). with a unique ID on the 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 prerequisite for arriving at a decision by the competent authority for procurement of required goods and services by floating a bid outside GeM, and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.

9. Purchase of goods without quotation can be resorted for value upto Rs. 50,000/- only on each occasion may be made without inviting quotations or bids (please refer to para 4.11) based on a certificate to be recorded by the competent authority, only when the required goods are not available on GeM.

10. In case a certain item is not available on the GeM portal, Purchase of goods costing above [Rs.50,000/- (Rupees Fifty thousand only) and upto Rs.5,00,000/- (Rupees Five lakh] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee (please refer to para 4.12).

11. Where an item is available on GeM, and the Port wants to buy outside the GeM in view of any compelling circumstances, the approval of the MD/Board shall be required. (Refer OM No F.6/15/2018-PPD issued by Department of Expenditure dated 05.02.2020)

12. **Receipt of Materials and Payment Procedures**: Further Details on receipt of Materials and Payment procedures are given in Annexure 36.

13. **Push Button Procurement on GeM** ((Notified vide OM No. F.6/7/2022-PPD issued by Department of Expenditure dated 06-09-2022)

a) As per Rule 144 (vii) and Rule 149 of GFR, 2017, the Port should satisfy itself that the price of the selected offer is reasonable. Sometimes, especially infrequently, government buyers find it difficult to certify the reasonableness of rates. Such users normally do not possess the requisite skills to make procurement decisions. It delays the procurement process. At the same time, for typically low-value procurements, efforts expended in assessing the reasonability of rates may be disproportionate. Additionally, with developments in technology and e-procurement becoming the norm, the availability of market activities and the capability to analyse them artificially have provided an opportunity to automate decision-making activities, such as the assessment of the reasonability of rates in such cases.

b) In view of the above, GeM offers the functionality of Push Button Procurement (PBP) for small-value procurements with the following conditions:

i) PBP will be made only on GeM through bidding (PBP through Direct Purchase, L-1, Custom-bid, etc. are not permitted)

ii) The total procurement value of the specific case is permitted up to Rupees Five (5) lakh (Notified vide OM No. F.6/7/2022-PPD issued by Department of Expenditure dated 11.01.2023) inclusive of all taxes.

iii) This will be an additional method of procurement, and Port is free to use or not to use this additional method of procurement.

iv) This method can be used only if at least five bids are received. In case fewer than five bids are received, the procurement is to restart using the usual procurement modes. However, buyers will have a choice to extend the PBP date once by three (3) days at the time of preparation of the tender document in case of lesser participation.

v) No splitting of requirements is to be done to bring procurement under this method.

vi) Once a bid is invited on GeM, the contract will be placed directly by GeM without any human intervention. [Provided condition in sub-para iv) above is complied].

vii) Gem will permit this method only for such categories where at least ten sources are listed.

c) GeM has published a manual on PBP for buyers on its website (https://assets-bg.gem.gov.in/resources/pdf/pbp-buyer_1662620846.pdf)

4.17.3 Procurement through Centralized Agencies or other Organizations.

1. If the Port does not have their own capability for procurement may engage procurement agents (for individual procurement or as outsourcing of service) with the approval of the Competent Authority. Many canalized agencies authorised by the government and some CPSEs provide end-to-end procurement services, i.e., framing procurement documents, bidding process, evaluation, and contract management. Possibilities of other Ministries/ Departments or their attached and subsidiary offices having spare-able quantities of required material may be explored. In such cases, Indents can be placed on them to supply requirements at mutually agreed terms. Procurements by such agencies would have to conform to these Procurement Guidelines. In such cases, a Service Contract can be placed on them for procurement services at mutually agreed terms.

2. **Terms and Conditions**:

   a) Procurements by such agencies would have to conform to these Procurement Guidelines.

   b) Usual formalities for preparation, budgetary provisions, and approval/ signing of invoices.

   c) 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.

   d) Representative of the Department may sign a declaration about the availability and reserving of the required budgetary provisions.

   e) Modalities of procurement, inspection, and tracking of supplies and Payments may be settled with the organisation.

3. Purchase through Other Organisations - Risks and Mitigations:

Risk-1

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-1

Mitigation strategies are to ensure vetting and certificates from technical, finance and procurement wings about the completeness of Indent before despatch. In critical and large procurements, liaison may be maintained with the procuring agency.

Risk-2

There is also a risk of delays in the finalisation of the contract by the Procuring agency, which may not be responsive to the Port's urgencies, especially if procurement involves clubbing of Indents from several organisations.

Mitigation-2

To mitigate such risk, a liaison may be maintained with the Port. In case abnormal delays occur, small procurements to tide over urgencies may be made directly.

Risk-3

Another risk is that the Supplier may not feel answerable to the Indentor and may not be responsive towards delivery, quality, and after-sales support. If problems arise, a dilatory tripartite correspondence may be required.

Mitigation-3

To mitigate this, proper commercial clauses may be included in the Indent to ensure the supplier's responsiveness to the Indentor. Liaison with the Procuring agency would also mitigate such risks.

Chapter-5
Bid Invitation Process

5.1. Preparation and Uploading/ Floating of Tender Documents

5.1.1 Model Tender Documents

Department of Expenditure (DoE); Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Goods (October 2021), Procurement of Non-Consultancy Services (October 2021) and Procurement of Consultancy Services (April 2023). Port may customise relevant MTD to prepare tender documents for their procurements. Guidance notes annexed to the MTDs detail the process of customisation of MTD for an Organisation and each procurement.

5.1.2 Tender Documents

1. The tender document is the fundamental document in the public procurement process, as after the award of the contract, it becomes part of the contract agreement. A carefully prepared tender document avoids delays and complaints. This will also attract more bidders to formulate and submit their competitive bids with confidence. Hence, it is worth spending time and effort on this, even in cases of urgency.
2. Provisions/ clauses in the tender document should be clear, self-contained, and comprehensive without any ambiguity to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises. While tender documents should be complete in themselves and may be slightly different for various categories of procurements, these must necessarily address the essential aspects mentioned below (Rule 173 of GFR 2017). Model Tender Documents, issued by the DoE, which comply with all these requirements, may be used, with due customisation:
    a) Description of the subject matter of procurement, its specifications/ drawings including the quality/ nature/ quality assurance, quantity, time and place or places of delivery/ completion;
    b) Limitation or preference for participation by bidders in terms of Government policies;
    c) The procedure, as well as the date, time, and place for obtaining, submitting, and opening of the bids;
    d) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which the Port will address the bidder's questions;

e) Criteria for determining the responsiveness of bids, criteria as well as factors to be considered for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the tender documents;

f) The eligibility criteria should take care of the supplier's eligibility to participate in the Tender process.

g) The qualification criteria for the bidders should consider their capability to perform the resultant contract successfully, balancing considerations of quality, time, and cost.

h) Commercial terms and conditions, e.g., payment terms, tax implications, respective obligations of the Port and the suppliers, and compliance framework for statutory and other norms. The provision of price variation, wherever considered appropriate, and the methodology for calculation shall be clearly stipulated in the tender document.

i) The tender document should include a clause that "if a firm quotes NIL charges/consideration", the bid shall be treated as unresponsive and will not be considered."

j) Procedures for redressal of grievances or complaints from aggrieved bidders;

k) If applicable, the Integrity Pact clause and format to be signed shall be included;

l) Suitable provision for settlement of disputes, if any, emanating from the resultant contract should be kept in the tender document and

m) Essential terms of the procurement contract include a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

3. Port may issue instructions regarding the appropriate delegation of authority for approval of the Tender Documents before these are floated/ uploaded.

4. **Eligibility criteria** specify the criteria that a bidder should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids.

5. **Qualification Criteria**: Qualification criteria determine the capability of bidders (who have passed the eligibility criteria) to perform the contract. Only those bidders who meet the qualification criteria, go to the next step of evaluation for award of contract. Qualification criteria should be clear and fair in regard to the specific circumstances of the procurement. Port should also keep the experience, technical and financial criteria broad based so that bidders with experience in items/ goods of a similar nature can participate. Appropriate parameters should

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

6. **Evaluation Criteria**: Evaluation criteria are the final filter used to select the bidders (who have passed the qualification criteria) for the award of the contract. Depending on the requirement and value-for-money (VfM) considerations, the Port may consider including, besides price, in the evaluation criteria in the Tender Document, one or more additional criteria, e.g., quality, 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 the evaluation of tenders that cannot be verified.

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

8. The Port should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than three weeks. In cases where participation of international service providers is contemplated, a period of not less than four weeks should normally be allowed.

9. Tender documents should invariably reserve the Port's right without assigning any reason to:

   a) reject any or all of the Bids or

   b) cancel the tender process, or

   c) abandon the procurement of the Services, or

   d) issue another tender for identical or similar Services.

5.1.3 Contents of Tender Documents

1. The Tender Document has the following main sections *(Rule 168 of GFR 2017)*. A reading of the sections of the tender document will make the purpose and instructions clear:

   a) Section I: Notice Inviting Tender (NIT) and its Appendix: Tender Information Summary (TIS);

   b) Section II: Instructions to Bidders (ITB)

   c) Section III: Appendix to Instructions to Bidders (AITB)

   d) Section IV: General Conditions of Contract (GCC)

   e) Section V: Special Conditions of Contract (SCC)

f) Section VI: Schedule of Requirements

g) Section VII: Technical Specifications and Quality Assurance

h) Section VIII: Qualification and Evaluation Criteria

i) Financial Bid (BOQ Excel Sheet)

j) Submission forms and formats, including Bid Form (Cover letter), bank guarantees and contract format, etc.

2. **Notice Inviting Tender**:

a) NIT is of legal importance since it is this part of the tender document that solicits offers from the bidders. The model NIT format in MTD should be used to publish the tender notice.

b) The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The NIT (and its appendix TIS) must contain sufficient information in brief for a prospective bidder to decide whether to participate in the tender and, if he decides to participate, how to go about it. To ensure competition, the attention of all likely bidders, for example, registered vendors, past suppliers, and other known potential suppliers, may be invited to the NIT through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically.

c) In case of procurement through a limited tender, the NIT may be uploaded on the GeM as well as on GeM- CPPP and Port's website with a note saying:

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

d) Time-stamped audit trails for the e-publication shall be maintained by the procurement portal. Printouts may be taken only in case of off-line tenders, if required, apart from ensuring maintenance of time stamped audit trail of e-publication. The complete details of the dates on which advertisements appeared on the website should be indicated when sending cases to higher authorities.

3. **Instructions to Bidders (ITB) and its Appendix (AITB)**:

ITB contain all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing and submitting a responsive process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders and award of contract but should

not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. ITB also contains an introduction/ overview of the contents of the tender document. Instead of modifying ITB every time, any changes warranted by exceptional circumstances may be indicated with the prior approval of CA in a separate Appendix to ITB (AITB), and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB shall supersede the corresponding provisions in the ITB.

4. **General and Special Conditions of the Contract (GCC and SCC)**:

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

This section describes the list of Goods required, Quantities, Delivery Requirements, Destination, and scope of supply (concomitant accessories, spare parts, and incidental Works/ Services). If there is no separate section on Technical Specifications (TS) and Quality Assurance (QA), then TS and QA may also be included here. It must be clarified whether the evaluation of eligibility/ qualifications/ financial bids would be done item-by-item in a schedule or on the total of all items in a schedule, and if there is more than one schedule, whether the same would be done on the schedule-by-schedule basis or the total of all schedules put together.

6. **Technical Specifications and Quality Assurance**:

Technical Specifications and Quality Assurance lays down the technical specifications and quality assurance requirements of the Goods required. It would also stipulate, if required, any compliance required by Central and State Pollution Control Boards.

7. **Qualification Criteria**:

a) If it is intended to use qualification criteria to evaluate a tender and determine whether a bidder has the required qualifications to perform the contract successfully, this point may be clearly specified in ITB/AITB or as a separate section of the tender document. The bidder must 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*.

b) **Pre/ Post Qualification Criteria** shall be based entirely upon the capability and resources required to perform the particular contract satisfactorily, considering bidders' experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing and relevant compliance with environmental protection regulations/ Environment Management System. The quantity, delivery, and value of the procurement shall be kept in view while the Pre/ Post Qualification criteria are fixed. There should be no Pre/ Post Qualification criteria that would be advantageous to foreign manufactured goods at the cost of domestically manufactured goods.

c) **Relaxation for Start-ups:** The condition of prior turnover and prior experience may be relaxed (Notified vide OM No.F.20/2/2014-PPD (Pt.) issued by Department of Expenditure dated 20.09.2016) for Startups (only to startups recognized by the Department of Industry & Internal Trade (DPIIT)) subject to meeting quality & technical specifications and making suitable provisions in the tender document (*Rule 173 (i) of GFR 2017*). Startups may be MSMEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Port not to relax such criteria.

8. **Submission Forms and Formats**:

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

b) **Financial Bid (BOQ Excel Sheet):** The Port should select an appropriate format of BOQ from the eProcurement Portal and upload it after filling up the entries for the complete schedule of requirements and various price components to enable the system to automatically calculate the all-inclusive price of a bid to generate a comparative tabulation of all bids. Bidders are to upload only the downloaded BOQ (in Excel format) after entering the relevant fields without altering, deletion, or modification of other portions of the Excel sheet. The quoted price shall be considered to include all relevant financial implications, including inter-alia the scope of the Goods to be supplied, location of the bidder, location of the consignee(s), terms of

delivery, extant rules and regulations relating to taxes, duties, customs, transportation, environment, labour of the bidder's country and in India.

5.1.4 Uploading of Tender Documents: Mandatory e-Publishing (Rule 159 of GFR 2017)

1. It is mandatory for all Ports to publish their tender enquiries, corrigenda thereof and details of bid awards online on the GeM-Central Public Procurement Portal (CPPP) and also on their website. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-qualification/ Registration or any other notice inviting bids or proposals in any form, whether they are advertised, issued to a limited number of parties or a single party. These instructions would not apply to the purchase of goods without quotations or the Purchase of goods by the purchase committee.
2. Individual cases where confidentiality is required for reasons of national security would be exempted from the mandatory e-publishing requirement. 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 Board.

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

At any time prior to the date of submission of bids, the Port may, Suo-moto or in response to a clarification sought by a prospective bidder (directly or in a pre-bid conference), amend tender documents by issuing a corrigendum. Copies of such amendment / modification should be uploaded on the E-publishing portal and Port's own website. In case of off-line tenders, the copies of such amendment / modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents and copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale). When the amendment/modification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such amendments and prepare a revised tender, the time and date of submission of tenders are also to be suitably extended (not less than 3 days) as per para 5.1.6 below.

5.1.6 Extension of Deadline of Bid Submission

1. To give sufficient time to bidders to prepare and submit their bids, the Port may suo-moto or based on justifiable request of bidder(s) or due to significant modification of tender documents (as per para 5.1.5 above), extend the time and date of submission of tenders suitably (not less than three (3) days), along with

suitable changes in the corresponding time-frames for receipt of tender, bid validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

2. **Auto-Extension of Bids – in case of lack of Response**: The e-Procurement portal/ GeM should not provide anybody, including the Port, with the bid count before the tender opening time, even at their request. The eProcurement portal/ GeM may facilitate the Port in specifying the minimum number of bids considered sufficient and the pre-specified number of days for automatic extension of bid opening (not less than 7 days) at the time of tender upload. The system shall declare in the tender details that in case of low competition (without specifying the number), the tender closing time shall be automatically extended by the specified number of days. If bids received till the bid opening time are less than the specified minimum bids, the system should automatically extend (only once) the tender opening by the specified number of days without seeking any input from or sharing any information with anyone, including the Port. Purchasers and bidders shall only be informed that due to less competition, the tender closing time has been extended up to (date and time). However, this automatic extension of bid opening shall be done only once, not repeatedly. If Port wants to go ahead even with low competition (e.g., due to urgency), they may mention 'one' as the minimum bid. So that if no bid is received, the tender is automatically extended; otherwise, it is not. GeM and eProcurement portals shall update their systems accordingly.

5.2. Obtaining Tender Documents and Submitting Bids

5.2.1 Availability and Cost of Tender Documents (Rule 161 (v) of GFR 2017)

Tender documents should preferably be sold or available for download after the date and time of the start of availability till the deadline for availability as mentioned in the tender document (say up to date of opening of tenders), and this should be clearly indicated in the documents. The Port should also post the complete tender document on the website and permit prospective bidders to make use of the document downloaded from the website.

Normally, no tender document fee should be charged. In exceptional cases, Port may fix a bare minimum cost of tender documents to defray the expenses/ effort of preparing documents, drawings, etc. The cost of the tender document is to be submitted to the authority nominated therein by the prospective bidder in the form of a demand draft /banker's cheque/ pay order/ online payment gateway. Firms that are eligible for exemption from the tender document cost, such as MSEs and Port's

registered units (for relevant items and monetary limit), have to submit/ upload scanned copies of documents in support of this exemption.

5.2.2 Participation of Bidders

1. **Eligibility Criteria**: The tender document may lay down eligibility criteria (for more details, refer to the MTD for Procurement of Goods) for participating in the tender process, e.g., restrictions on participation by bidders relating to - type of commercial entity (e.g., the bidders must be a private or Public registered entity), insolvency, ineligibility/ debarment/ convictions/ conflict of interest, Class of bidders (as per Make in India Order), bidders from countries having land borders with India etc. Except for the eligibility criteria, participation shall be open to all bidders in Open/ Global Tender Enquiries. In the case of the Second Stage (of two Stage Bidding or PQB) or Limited Tenders, participation shall be open only to such bidders who have been previously shortlisted or specifically invited.
2. **Purchase Preference Policies**: The Port may reserve its right to grant preferences to eligible Bidders under various Government Policies/ directives (policies relating to Make in India, MSME, Start-ups, etc.).
3. **Conflict of Interest**: Bidders having a conflict of interest shall not be eligible to participate in the tender process unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Port throughout the Tender process and execution of the Contract. (Please also refer to para 3.2 above). The bidder shall be considered to have a conflict of interest in this tender process and execution of the resultant contract in the following situations:

    a) If its personnel have a close personal, financial, or business relationship with any personnel of the Port who are directly or indirectly related to the procurement or execution process of the contract, which can affect the decision of the Port directly or indirectly;

    b) The bidder (or his allied firm) provided services for the need assessment/ procurement planning of the Tender process in which it is participating; (inter-alia need assessment, preparation of - feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc.

    c) A Principal can authorize only one agent, and an agent should not represent or quote on behalf of more than one Principal. However, this shall not debar more than one Authorised distributor (with/ or without the OEM) from quoting equipment manufactured by an Original Equipment Manufacturer (OEM) in procurements under a Proprietary Article Certificate or

    d) A bidder participates in more than one bid in this tender process. Participation in any capacity by a Bidder (including the participation of a

Bidder as a partner/ JV member or sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of all bids in which he is a party. However, this does not limit the participation of an entity as a sub-contractor in more than one bid if he is not bidding independently in his own name or as a member of a JV;

4. **OEM/ Agents of Supplier**:

a) Except in the case of Commercially-Off-the-Shelf (COTS) items, when a firm sends a 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 manufacturer's confirmation of extending the required warranty support for that product (in addition to the bidders' confirmation to the required warranty) as per formats given in Tender Documents. This is necessary to ensure a quotation from a responsible party offering a genuine product backed by a warranty obligation from the concerned manufacturer.

b) In the 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 clearly declaring it in the tender documents.

5.2.3 Pre-NIT and Pre-bid Conferences

1. **Pre-Notice Inviting Tender (NIT) Conference (Market Consultation)** (Rule 173 (x) of GFR 2017)

In complex and innovative procurement cases or where the Port may not have the required knowledge to formulate tender provisions, a Pre-NIT conference (before finalising/ publishing NIT) may help the Port in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend (Notified under para 9.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021). All inputs received from the probable bidders in such conference shall be compiled/ minuted, and requirements finalised (with the approval of the Technical committee, if formed, by the competent authority). In a more complex, large, and green-field/ blue-sky project, Two-Stage Tendering (with EoI) would be more appropriate and transparent.

2. **Pre-bid Conference**: In case of turnkey contract (s) and sophisticated and costly equipment, large works and complex consultancy assignments, a suitable provision shall be kept in the tender documents for one or more pre-bid conferences (after the NIT and Tender Documents have been published) for clarifying issues/clearing doubts, if any, and for ensuring a level playing field, relating to the specifications and other allied technical/commercial details.

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

b) The date and time for such a meeting should normally be after 15 to 21 (fifteen to twenty-one) days of the issue of the Tender Document and should be specified therein. The date and time by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the tender Document (7 days before the date of the conference, if not specified). The pre-bid conference may also be held online at the discretion of the Port.

c) Timelines for response to the pre-bid conference, e.g., Replies to Questions, issue of minutes of the pre-bid conference, Corrigenda, etc, should be mandatorily mentioned in the tender document and complied with.

d) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per the specified format from their Company/ principals; otherwise, they shall not be allowed to participate.

e) After the pre-bid conference, minutes of the pre-bid conference shall be published on the Port's portal within seven days of the conference. If required, a clarification letter and corrigendum to the Tender Document (as per para 5.1.5) shall be issued, containing amendments to various provisions of the Tender Document, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Port may suitably extend, as necessary, the deadline for the bid submission (as per para 5.1.6).

5.2.4 Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may ask questions in writing/ electronically from the Office/ Contact Person as mentioned in the tender document, provided the questions are raised before the clarification end date mentioned therein (or if not mentioned, before 7 days of the deadline for the bid submission). This deadline shall not be extended in case of any intervening holidays. A response will be sent in writing/ digitally to the clarifications sought at least 5 days prior to the date of opening of the tenders. Only material queries and their responses shall be uploaded on the website without revealing the identity of the bidder making the query. When the response to clarification changes the requirement significantly and /or when there is not much time left for the bidders to respond to such responses,

the time and date of submission of tenders may also be suitably extended (not less than 3 days) as per para 5.1.6 above.

5.2.5 Withdraw/ Amendments / Modifications to Bids by Bidders

The bidder, after submitting its bid, is permitted to substitute/ alter/modify it, superseding earlier bid, so long such revised bid is uploaded/ received duly sealed and marked like the original bid, up to the deadline of submission of bids. Resubmission of a bid shall require uploading all documents, including the financial bid, afresh. The system shall consider only the last bid submitted as a valid bid. The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not be opened during the bid opening. Any such action after that bid-submission deadline is not permitted. Withdrawal/ amendment/ modification/ alteration/ impairment/ derogation of a bid, in any respect, by its bidders between the deadline for submission of bids and the expiration of the period of bid validity, his bid security/ EMD shall be forfeited besides imposition of any other punitive remedy available to the Port. In such cases, tender evaluation shall be proceeded with in terms of para (7.6.2) below.

5.2.6 Sealing/ Marking of Bids in off-line Tenders

1. The tender document should indicate the manner of submission/ uploading of bids.
2. In the case of off-line tenders, the total number of bid copies (for example, duplicate or triplicate, and so on) required to be submitted should be specified. The bidder is to seal the original and each copy of the bid in separate envelopes, duly marking the same as "original", "duplicate," and so on, and print the address of the purchasing office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (the 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 Port does not assume any responsibility for its misplacement, premature opening, late opening, and so on.

5.2.7 Uploading/ Submission of Bids

1. Uploading Bids in eProcurement. Different eProcurement portals may have different provisions, but the following is the generic description: (These portals must be compliant with 'Guidelines for Compliance to Quality Requirements of eProcurement' (GCQE), July 2021 issued by Systems Standardisation Testing and Quality Certification (STQC) Directorate (an attached office of the Ministry of Electronics and Information Technology (MeitY), Government of India).

a) The Port is neither a party nor a principal in the relationship between Bidder and the organisation hosting the e-procurement portal (hereinafter called the Portal). Bidders must acquaint and train themselves with the rules, regulations, procedures, and implied conditions/ agreements of the Portal. Bidders intending to participate in the bid shall be required to register with the portal. Bidder must comply with the conditions of the eProcurement portal, including registration, compatible Digital Signature Certificate (DSC), etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.

b) Any query/ clarification/ complaint regarding downloading tender documents and uploading bids on the e-procurement portal may be addressed to the portal's Help Desk.

c) In case of conflict between the provisions of the Portal and the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders.

d) Bids must be uploaded by the submission deadline mentioned in the Tender Document. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall not be extended.

e) Only one copy of the bid can be uploaded, and Bidder shall digitally sign all statements, documents, and certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000 as amended from time to time.

f) Regarding the protected Price Schedule (excel format, Cover-2), the Bidder shall write his name in the space provided in the specified location only. Bidder shall type rates in the figure only in the rate column of respective item(s) without any blank cell or zero values in the rate column and without any alteration/ deletion/ modification of other portions of the Excel sheet. If space is inadequate, Bidder may upload additional documents under "Additional Documents" in the "bid Cover Content."

g) The date and time of the e-Procurement server clock, which is also displayed on the bidders' dashboard, shall be used as the reference time for deciding the closing time of bid submission. Bidders are advised to ensure they submit their bid within the deadline and time of bid submission, taking the server clock as a reference, failing which the portal shall not accept the Bids. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their bid because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a

complaint. The Port shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-Tender Process.

h) The bidder should ensure the correctness of the bid before uploading and take a printout of the system-generated submission summary to confirm the successful bid upload. All bids uploaded by Bidder to the portal shall be automatically encrypted. The encrypted bid can only be decrypted/ opened by the authorised persons on or after the due date and time.

i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). The bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Port reserves its right to call for verification originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before the issue of Letter of Award (LoA).

j) If so specified in the tender document, originals (or self-attested copies of originals – as specified therein) of specified scanned, uploaded documents must be physically submitted before the deadline specified for it (before the bid submission deadline, if not so specified) sealed in double cover, and acknowledgement must be obtained before the bid submission deadline at the mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for the physical submission of originals, it shall stand extended to the next working day at the same time and venue.

k) No manual Bids shall be made available or accepted for submission in e-procurement (except for originals of scanned copies as per sub-para above).

2. **Submission of Bids in Offline Tender Process:** In offline tenders, receipt and custody of bids shall be done transparently to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

a) The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes and kept in an outer sealed envelope.

b) The Port shall maintain tender boxes for receiving the bids at suitable locations, which would facilitate security and easy access for 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. The key of one lock will be

with the head of the office, and the other key with the official nominated by him;

c) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by Mail or facsimile are to be ignored and rejected.; and

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

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

5.2.8 Bid Validity

A bid shall remain valid for the period mentioned in the Tender Document (90 days if not so specified). A bid that is valid for a shorter period shall be rejected as nonresponsive. In case the day up to which the bids are to remain valid falls on or is subsequently declared a holiday/ closed day for the Port, the bid validity shall automatically be deemed to be extended upto the next working day. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the bidders. (Please see para 7.6.2 below for an extension of the Bid Validity Period)

5.3. Opening of Bids

1. Immediately after the deadline for bid submission, the Port shall proceed to the bid opening. If the specified date of Bid Opening falls on is subsequently declared a holiday or closed day for the Port, the Bids shall be opened at the appointed time on the next working day. In offline tenders, the BOC shall comprise one officer each from the Port and finance.

2. In e-procurement, all tenders uploaded by bidders are received, safeguarded, and opened online on the portal, as detailed in Appendix-GM-S2/A3.

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

a) The authorised representatives of bidders who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring letters of authority from the corresponding bidder with them. The prescribed format for the letter of

authority for attending the bid opening should be given in the tender document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report is given in Annexure 13;

b) At a prescheduled date and time, the BOC of the day should get the 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, tenders are 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);

c) The technical bids will be opened on the pre-announced date, and the financial proposals shall remain sealed and shall be opened publicly in due course of time only for those firms that have technically qualified.

d) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the 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 pages, if any, should be crossed out across and marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC;

e) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with the date and time and numbered by the officials opening the tenders and the 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;"

f) 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 distinctive feature of the tender for the information of the representatives attending the tender opening. Clarifications by the bidders shall not be allowed or recorded during the bid opening. BOC has no authority to reject any tender at the tender opening stage;

g) Proper sealing and codification need to be done on reference samples as well for samples that accompany the bid (Please note that as detailed in para 2.2.1-9 calling for a sample along with the bid for evaluation is strictly discouraged). These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section.

h) Financial instruments should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring.

i) A bid opening report containing the names of the bidders (serial number wise) and 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, the list of the representatives attending the tender opening, and the bid opening report are to be handed over to the nominated procuring officer, and an acknowledgement shall be obtained from him.

j) Similar procedure shall later be followed during Financial Bid Opening in case of multiple-envelop bidding.

5.4. Transparency and Protecting Third-Party Rights of Bidders

1. Objectives of transparency in eProcurement are amply served if data relating to the Tender and Award of Contract are accessible to the public.

2. As far as the bidders who have participated in a tender (participating bidders), for transparency, a comparative summary of Technical (compliance details) and of Financials bids (including QCBS calculations, wherever applicable) should also be accessible to them, but not necessarily to the public at large, unless sought and if permissible under the RTI act.

3. Bidders may have genuine concerns about techno-commercial and operational trade secrets if their full technical and financial bids are accessible to their competitors or the public at large. This concern may get aggravated in complicated EPC/ PPP/ Consultancy procurements. Technical/ financial bids should not be made accessible to the public at large, and a call needs to be taken based on the sensitivity of details in the bids to restrict access of even

participating bidders to full technical/ financial bids of their competitors. The decision of Port to share or not share the full technical bids with other participating bidders should be clearly brought out in the Tender Documents.

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

5.5. Bid Invitation Process- Risks and Mitigations

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

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

Risk-3

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

Mitigation-3

Lay down criteria when PQB tendering is warranted. Also, model PQC criteria for diverse types of procurements should be laid down.

Risk-4

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

Mitigation-4

Publicity and adequate time for bid submission must be ensured. Higher-level approval should be obtained for a shorter bid submission period.

Risk-5

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

Mitigation-5

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

Chapter-6

Forms of Securities

6.1. Forms of Security

6.1.1 Bid Security

1. To safeguard against a bidder's withdrawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or special limited tender enquiry Bid Security (also known as Earnest Money Deposit (EMD)) (Rule 170 of GFR 2017) is to be obtained from the bidders along with their bids (Notified vide OM No F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 25.07.2017).

   The amount of bid security should ordinarily range between one (1) to two (2) per cent of the estimated value of the goods to be procured.

   The amount of bid security, rounded off to the nearest hundreds of Rupees, as determined by the Port, is to be indicated in the tender documents.

   Bid security may be obtained in the form of insurance surety bonds (Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022), account payee demand draft, banker's cheque, or bank guarantee (including e-bank guarantee) (Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022) from any of the commercial banks or payment online in an acceptable form. In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders, it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/ confirmed from any of the commercial banks in India in an acceptable form. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.

2. In place of a Bid security, Port, after seeking approval from the competent authority, may consider asking Bidders to submit a Bid securing declaration (BSD), accepting that if they withdraw or modify their Bids during the period of validity or if they are awarded the contract and they fail to submit performance security, or to sign the contract, before the deadline defined in the tender documents, it shall be considered as a violation of Code on Integrity and they shall be suspended for the time period specified in the BSD from being eligible to submit Bids/Proposals for contracts with the Port.

3. In appropriate cases, Submission of the bid security may be exempted with the Competent Authority's approval, especially in the case of indigenisation/ development tenders, limited tenders, and procurements directly from the

manufacturer or authorised agents, bidders that are currently registered, and will also continue to remain registered during the bid validity period with the Port. Micro and Small Enterprises (MSEs) as defined in the MSE Procurement Policy issued by the Department of Micro, Small and Medium Enterprises (MSME) and registered Startups as recognized by the Department for Promotion of Industry and Internal Trade (DPIIT) are exempt from payment of EMD. In case the bidder falls into 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.

4. A bidder's bid security shall be forfeited if the bidder withdraws or amends its bid or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security or to sign the contract within the specified period.

5. Bid securities of the unsuccessful bidders should be returned to them as soon as possible after the expiry of the final bid validity period and, at the latest, by the 30th day after the award of the contract. Bid security should be refunded to the successful bidder upon receipt of performance security. However, in the case of two-packet or two-stage tendering, Bid securities of unsuccessful bidders during the first stage, i.e., technical evaluation, etc., should be returned within 30 days of declaration of the result of the first stage, i.e., technical evaluation, etc. (Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022)

6.1.2 Performance Security

1. To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) (Rule 171 of GFR 2017) is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in the case of contracts for goods, the need for Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance security should be for an amount of three (3) to five (5) per cent of the value of the contract, as specified in the tender documents (Notified vide OM No. F.1/2/2023-PPD issued by Department of Expenditure dated 01.01.2024). The Port may stipulate an upper ceiling for the Performance Security amount. For an illustrative example, the ceiling can be Rs 75 Lakhs for tenders up to Rs 50 Crores and Rs 3 Crore for tenders above Rs 50 Cr but below Rs 300 Cr. For tenders of higher value than this, the Port may decide the amount of Performance Security (but not less than Rs 3 Cr mentioned above). However, Ports are free to decide their own upper limits for performance security, with the approval of Competent authority and finance concurrence, based on their perception of performance risks vis-a vis need for competition. Performance security may be furnished in the form of an Insurance Surety Bond (Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022), account

payee demand draft from a commercial bank, bank guarantee (including e-bank guarantee) (Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022) issued/confirmed from any of the commercial banks in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In the case of GTE tenders, the performance security should be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities (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). Unlike the procurement of Works, in the procurement of Goods, the concept of taking part of the Performance Guarantee as money retained from the first or progressive bills of the supplier is not acceptable.

2. Submission of Performance Security is not necessary for a tender value up to Rupees 5 (five) lakh. Port may with the Finance concurrence and approval of the Competent Authority decide the threshold value below which the Performance Security is exempted. Port may also decide on the nature of Goods contracts which are exempted from providing Performance Security

3. Port may exempt the following entities (on their specific requests or otherwise) from submission of Performance Security:

   a) Govt. Ministries, Departments, Attached and Subordinate Offices, Autonomous bodies, (There is no bar from taking Performance Security from CPSEs)
   b) OEM in whose favour PAC, in tenders issued against PAC.

4. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award, depending on the amount), and it should remain valid for a period of 60 (sixty, or any other period mentioned in the tender Documents) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.

5. In the case of Goods contracts (e.g., Rate Contracts and other long-term contracts) spanning over multiple years, Port may consider proportionately reducing performance security in proportion to the balance contract period, wherever feasible, instead of retaining the full performance security over the complete contract period which may be of 2-3 years or may be more.

6. The performance security will be forfeited and credited to the Port's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest after he duly performs and completes the contract in all respects (full performance security should be forfeited, even if the Contractor has partially executed the work) but not later than 60(sixty) days of completion of

all such obligations, including the warranty under the contract. The senior officers should monitor the return of Bid/ Performance Securities, and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Port to make the process transparent and visible.

6.1.3 Insurance Surety Bond (ISB)

An Insurance Surety Bond (ISB) is a three-party agreement that provides financial assurance to one party (the beneficiary) by another party (the surety or bonding company) on behalf of a third party (the principal). ISB ensures that the principal fulfils their contractual obligations. Unlike a Bank Guarantee, it is a type of premium-based insurance product and does not require a deposit of a collateral amount by the principal with the surety. Here are the key components:

1. **Principal**: The principal is the party that obtains the surety bond. The principal is typically the contractor or service provider who provides the Bid/ performance security to the Port.
2. **Beneficiary**: The beneficiary is the party (Port) that requires the Insurance surety bond. The beneficiary seeks financial protection in case the principal fails to meet their obligations.
3. **Surety Insurer**: The surety insurer is the bond issuing entity (Bank or Insurance company) that issues the bond. They act as a guarantor, assuring the beneficiary that the principal will perform as promised. If the principal defaults, the surety insurer assesses the extent of default and determines the amount payable under the bond. If the principal does not pay within 14 days, the surety insurer pays within 45 calendar days of receiving the necessary documentation.

6.1.4 Electronic Bank Guarantee (e-BG)

1. **Background**: Electronic Bank Guarantee is a dematerialised Bank Guarantee processed on National e-Governance Services Limited (NeSL) (an Information Utility registered with the Insolvency and Bankruptcy Board of India under the aegis of the Insolvency and Bankruptcy Code). It handles all lifecycle events of e-BG - execution by the issuing Bank, intimation to and verification by the beneficiary, amendment, invocation or release by the beneficiary, cancellation, etc. The facility is available 24/7, including non-working days. Beneficiaries and banks can continue to use their own BG templates. All bidders may be encouraged to submit e-BGs instead of traditional paper-based bank guarantees.
2. **Creation of e-BG**: The Port should ensure that the bidder/ contractor is informed (in the tender documents) of its Unique Identity Number (UIN – which can be allotted by its Bank) and email ID. A clause regarding e-BGs may be included in the tender, acknowledging, and accepting the use of e-BGs as a valid form of

bank guarantee for the tender process. The Port may reserve the right to verify the authenticity of eBGs and take necessary actions in case of discrepancies. The UIN and email ID of the beneficiary are specified by the issuing bank when creating the e-BG on the NeSL portal upon being approached by the bidder/ contractor. On creation of e-BG, it is stored on the NeSL portal.

3. **Intimation to Beneficiary**: NeSL shall send a notification to the email ID of the beneficiary provided by the issuing Bank (as well as the beneficiary's registered email ID) during issuance or subsequent event of e-BG (amendment/ invocation, release/ cancellation, etc.). The Port can receive the email notification without registration, but such an email shall not have the e-BG document attachment. The issuing Bank can also arrange to forward the e-BG to the beneficiary through the applicant or any other mechanism.

4. **Registration and Login**: Beneficiaries and their authorised representatives must register with NeSL using UIN and email ID. They must log in to the NeSL portal using the same details to view, download, verify, or release/ invoke the e-BG. Integration with Government procurement portals (CPPP, GeM, State Govt procurement portals) is being explored to facilitate e-BG access without needing to log into the NeSL portal.

5. **Easy Verification**: Verification of the e-BG stored in NeSL is sufficient, and verification with the issuing Bank is not required. This is a significant benefit for the Port.

6. **Invocation and release**: The e-BG process through NeSL facilitates beneficiaries submitting requests for invocation or any other consents through digitally signed submission in the NeSL portal without the need to approach the issuing bank.

6.1.5 Warranty Bank Guarantee

In the 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 the part of the vendor/ contractor during a specified period of months from the date of commissioning or 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 the Performance guarantee to be valid upto 60 (sixty) days beyond the 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 the procurement of goods other than capital equipment

(and in the case of low-value capital goods, say up to rupees one lakh), a warranty clause is not called for.

6.1.6 Verification of Bank Guarantees

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

   a) BG shall be as per the prescribed formats.

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

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

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

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

2. Bank guarantees, either received in physical form or electronic form, should be verified for their genuineness following the prescribed method for the same, and the Port officials should do due diligence on the genuineness of the Bank Guarantees before acceptance of the same.

3. Corporate Guarantee or Indemnity Bond shall not be accepted for Bid Security (EMD) or performance Security or in lieu of any other Bank Guarantee (e.g., for advance payment/ warranty obligations).

4. Please note the ease with which an e-BG can be verified, as shown in para 6.1.4-5 above.

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

A suitable mechanism for safe custody and monitoring of EMDs, performance securities, and other instruments should be developed and implemented by each Port. The Port officials shall also make institutional arrangements for taking all necessary actions on time for extension or forfeiture/ encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in the 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 computerised with automatic alerts about lapse of validity, etc.

Chapter-6-A

Payment Clause and Terms of Payment

6.2. Payment Clause

1. The elements of price included in the quotation of a bidder depend on the nature of the goods to be supplied and the allied services to be performed, the location of the supplier, the 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.

2. In the 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 the case of imported goods, in addition to elements of price similar to the above (other than excise duty and taxes), there may be elements of customs 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.

3. **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.

4. **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. For domestic bidding, regardless of whether the bidder is foreign or Indian, the currency of the bid and payment should be entirely in Indian Rupees. In GTE (Global Tender Enquiry), foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies such as US Dollars, Euros, Pound Sterling, Yen, other relevant currencies (The Central Board of Indirect Taxes and Customs in India (CBIC) issues Exchange Rate Notification under Customs Act, 1962, which lists currencies and exchange rates for imported goods in Schedule I – which may indicate relevant currencies for indicate. The current notification is Exchange Rate Notification No. 30/2024 - Customs (N.T.), or a combination thereof. However, prices for goods works, or services (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees. Indian bidders are required to quote in INR only. During the evaluation, all quoted prices are converted into Indian Rupees as per the procedure mentioned in para 7.5.2-1.

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

6. **Payment to Suppliers**: In a supply contract, the delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the seller's contract. 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 the 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 is as much a part of the payment as the amount actually released. Detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of tax returns, the Port must provide the statutory certificates for the taxes deducted from the supplier so that he can claim set-offs and refunds from the concerned authorities. As far as MSME suppliers are concerned, MSME Act 2006 has provisions for timely payments within 45 days and a levy of penal interest for delayed payment and arbitration/ conciliation for related complaints by Micro and Small Enterprises Facilitation Councils.

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

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

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

f) While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within the terms of the contract and that 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

1. Terms of Payment may be decided by the Port safeguarding its interest based on the terms of delivery, nature of goods, type of inspection, mode of transport and risks in such situations. The following payment terms are suggested for various terms of delivery.

2. Where the term 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 the production of all required documents by the supplier.

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

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

   a) 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 the site by the consignee and a balance of 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee;

   b) For a contract with terms of delivery as FOR destination/delivery at the 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 the site by the supplier), the desirable terms of delivery are FOR destination/delivery at the site so that the supplier remains responsible for the 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

1. Port should make payments through the Electronic Clearance System (ECS), e.g., Real-Time Gross Settlement systems (RTGS), National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways. As per RBI guidelines, the ECS mandate in RBI's format may be obtained at the time of supplier registration and in the tender document. The Format is available with all Banks.
2. However, if ECS payments are not feasible, payments may be made in exceptional circumstances by cheque/demand draft.
3. 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 the supplier authenticates both the endorsement and pre-receipt. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank.
4. Trade Receivables Discounting System (TReDS) is an electronic platform for facilitating the financing / discounting of trade receivables of Micro, Small and Medium Enterprises (MSMEs) through multiple financiers. These receivables can be due from corporates and other buyers, including Government Departments and Public Sector Undertakings (PSUs). Payments can also be made through this platform to MSE suppliers.

6.3.2 Documents for Payment for Domestic Goods

1. Supplier's Invoice indicating, *inter alia,* description and specification of the goods, quantity, unit price, total value;
2. Packing list;
3. Insurance certificate;
4. Proof of Dispatch: Railway receipt/consignment note;
5. Quality Assurance Certificates:
   a) Manufacturer's guarantee certificate or in-house inspection certificate; or
   b) Inspection certificate issued by Port official or inspector appointed by the Port;
6. Any other document(s) as and if required in terms of the contract.

6.4. Terms of Payment for Imported Goods

6.4.1 Terms of payment

Usual payment terms, unless otherwise directed by Competent Authority, are indicated below:

1. Cases where installation, erection, and commissioning (if applicable) are not the responsibility of the supplier -- 100 (hundred) per cent net price is to be paid against the production of stipulated documents;
2. In cases where installation, erection and commissioning are the responsibility of the supplier -- 80 - 90 (eighty to ninety) per cent of the net price is to be paid against production of stipulated documents, 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;
3. Payment of agency commission, if payable, against – the entire 100 (hundred) per cent agency commission is paid (in equivalent non-convertible Indian Rupees based on 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

1. It should be ensured that the imports into India conform with the export-import policy in force: FEMA; FEMA (Current Account Transactions) Rules, 2000 framed by Port; and directions issued by RBI under FEMA from time to time.
2. For imported goods, payment usually happens through the Letter of Credit (LC – refer to para 6.4.5 below) opened by the State Bank of India or any other commercial bank as decided by the Port. The amount of LC should be equal to the total payable amount and be released as per the clauses mentioned above. 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.
3. To have uniform payment clauses in GTE tenders for foreign and domestic bidders, the Port may include a provision in its Tender Conditions on the merits of the case (especially high-value contracts for sophisticated equipment/ machinery), allowing payment through LC to domestic bidders also.

6.4.3 Documents for Payment for Imported Goods

The documents needed from the supplier for the release of payment are to be clearly specified in the contract. The paying authority also verifies 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:

1. Supplier's original invoice giving full details of the goods, including quantity, value, and so on;
2. Packing list;

3. 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;
4. Quality Assurance Certificates:
   a) Certificate of pre-dispatch inspection by the Port's representative or
   b) Manufacturer's test certificate and guarantee;
5. Certificate of insurance;
6. 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 Port, indicating:
   a) Name of the vessel/carrier;
   b) Bill of lading/airway bill;
   c) Port of loading;
   d) Date of shipment;
   e) Port of discharge and expected date of arrival of goods;
   f) 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 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 Aircraft. For such imports, Port may engage Air Freight Consolidators, who consolidate the small air cargo of different customers and airlift them from one airport to another. The hiring of Airfreight Consolidators' services should be done transparently, following standard principles of public procurement.

6.4.5 Letter of Credit

1. **Parties to the LC:** The purchaser forwards a request to its bank (called issuing bank) in their prescribed format, along with all relevant details, including an authenticated copy of the contract. Based on this, the issuing bank opens the LC, promising to pay the specified amount to the supplier's (beneficiary's) bank based solely on the documents presented by the supplier as specified in the LC conditions, without physically ascertaining the shipment of goods. The issuing bank arranges with a bank in the supplier's region (called advising bank) to notify the supplier and his bank of the availability of the LC. Since the supplier may not

be comfortable with the issuing bank, it may ask a bank he trusts (called confirming bank) to add a guarantee to ensure payments by the issuing bank.

2. **Risks Involved**:

   a) Commercial Risk: Non-payment due to buyer's financial distress.

   b) Global Risk: Political instability, currency fluctuations, import/export restrictions, disruptions in international logistics.

   c) Documentary Risk: Discrepancies in submitted documents or interpretation of documents and LC conditions by various parties involved.

   d) Bank Risk: Bank insolvency or non-performance.

   e) Fraud: Shipment may not be physically dispatched or dispatched in damaged condition or with inadequate packaging

3. **Precautions**:

   a) Care should be taken to ensure that all details in the LC (such as product description, quantity, payment terms, documents to be produced, LD clause, and shipping terms) are accurate and identical to those shown in the contract to avoid discrepancies.

   b) Frequent amendments can lead to delays and complications. Suppliers may use their own delays in supplies by asking for unnecessary amendments to LC (or contract).

   c) Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600) should be adhered to while opening the LC for import into India.

   d) The seller must present documents in time within the tenure of the LC to receive payment and the documents submitted must match the LC requirements.

4. **Charges and Costs**:

   a) Opening Charges: These are incurred by the Port and include both commitment fees (charged for the LC's validity period) and usance fees (if the LC allows deferred payment).

   b) Advising Fee: This is paid by the issuing bank to the advising bank and is included in charges to the Port.

   c) Confirming Bank's Fee: If applicable, paid to the confirming bank by the supplier.

   d) Extension/ Amendment Fee: This fee applies when an LC needs to be extended or amended due to changes in delivery dates, terms, or other conditions. The party requesting the extension or amendment (purchaser or seller) pays this fee.

e) Retirement Charges: The supplier's (beneficiary) bank levies these charges on the supplier to handle payment from the issuing bank.

f) Other Charges: Reimbursements for foreign trade law-related obligations, if any, to be borne by the party of that country. For example, if there are specific legal requirements related to foreign exchange regulations or documentation in the exporting country, the Seller may need to cover these costs. If there are specific taxes for foreign exchange remittances, then the purchaser may bear such charges.

5. **Types of LC**:

a) Revocable LC: This can be modified or cancelled without notice.

b) Irrevocable LC: This cannot be amended, modified, or cancelled after issue without agreement and notice to the seller. 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.

c) Confirmed LC: An intermediate bank in the supplier's country (called confirming bank) adds its confirmation at the request of the seller, guaranteeing that payment would be made as per LC conditions, even if the issuing bank or seller's bank demurs.

d) Unconfirmed LC: There is no additional confirmation beyond the issuing bank.

e) Transferable LC: The seller can transfer part of the LC to another party (e.g., as a payment to his supply chain).

f) Back-to-Back LC: An intermediary (second beneficiary) is involved in this.

g) Revolving LC: This covers multiple transactions over an extended period. It is specifically used for repeated shipments of the same product between the same buyer (importer) and seller (exporter).

6. **Deduction of Liquidated Damages (LD)**: The delivery schedule and LD clause (including the amount of LD) are part of the LC conditions. If the documents submitted (inspection certificate and dispatch documents) show that these conditions of LC are violated, LD, as per the LC conditions, is deducted from the payment made to the supplier. In case the delivery date of the contract is extended to take care of a 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.

6.5. Advance Payment

6.5.1 Conditions for Advance Payments (Rule 172(1) GFR 2017)

1. **Conditions:** Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, in exceptional situations where substantial funds are to be sunk by the contractor before payment becomes due, considering the lower cost of funds for the Port as compared to the higher cost of funds for the bidder, advance payment with safeguards (BG or Insurance Surety Bond or Letter of Credit) may be considered. So advance payments may be considered only in the following exceptional situations:

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

   b) Advance payment demanded by firms against fabrication contracts, turn-key contracts, or supply of complicated tailor-made goods and so on;

2. **Quantum:** The quantum of such advance payments should not exceed the quantum of funds to be sunk by the contractor before payment becomes due in the contract. The quantum of advance payments should not generally exceed the following limits:

   a) Thirty per cent of the contract value to private firms;

   b) Forty per cent of the contract value to a state or central Government agency or PSE;

   c) In the case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.

   d) In exceptional cases, the competent authority may relax the ceilings mentioned above with prior concurrence of the Finance.

3. **Interest-free:** Since the provision of advance payment leverages the difference in interest rate as argued in sub-para 1) above and considering the additional cost of Bank Guarantee for advances for the bidder, interest-free advance payments may be considered with the approval of competent authority and finance concurrence. Where an interest-free advance is permitted, a clause in the tender enquiry and the contract may be stipulated that if the contract is terminated due to default of the contractor, the advance payment would be deemed as an interest-bearing advance at the interest rate (e.g., the interest rate of the SBI Lending Rate) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly. In appropriate cases, the competent authority may stipulate advance payments with suitable interest rates (e.g., the interest rate of the SBI Lending Rate) to be recovered along with the instalments of recovery of advance payment.

4. **Instalments**: The advance payment should not be made in less than two instalments, as per the expected infusion of funds required in the contract, except in exceptional circumstances for the reasons to be recorded. This will keep a check on contractor misutilisation of full advance when the contract is delayed considerably.

5. **Recovery**: Advance payments, especially interest-free advances, should be recovered (from either running bills or from the Performance/ Advance payment Bank Guarantees) in instalments linked to milestones or specified periods, whichever is earlier. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence, and the scope for misuse of such advance could be reduced.

6. **Bank Guarantee**: While making any advance payment as above, adequate safeguards in the form of a bank guarantee (or e-Bank Guarantee of at least 110% of advance) should be obtained from the firm. In case the advances are to be paid/ recovered in instalments, an equal number of part BGs (with proportionate amount and validity) may be taken instead of lumpsum BG, with each BG released after a related recovery is made. An Indemnity Bond is not to be considered in place of a Bank Guarantee. However, no Bank Guarantee should be insisted in case advance is being given to Central Ministry/ Department, there attached/ subordinate offices or the Autonomous Bodies attached with them. The BG may also not be taken, wherever a contract has been placed on a CPSE on nomination basis.

7. Milestone/ stage payments or part payments against proof of dispatch documents should not be considered as advance payments for the purpose of this para, as these payments are made after the sinking of funds by the contractor for achieving these milestones/ stage/ dispatches. These should be provisioned in the tender document/ contract, including Bank Guarantee to be taken, if any, in case of milestone/ stage payments. (Rule 172(2) GFR 2017)

8. Provision of advance payment should be anticipated at the procurement planning stage. The quantum of Advance payment and related conditions should be declared in the Tender Documents, with the approval of competent authority and concurrence of finance. If not so declared, the condition of advance payment for a particular bid should not be agreed to.

6.5.2 Documents for Advance Payments

Documents needed from the supplier for advance payment release 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 cover the overall expenditure incurred by the Port for receiving the goods at the destination. Where delivery of imported goods is required by the purchaser on a CIF/CIP/ DDP 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)

Chapter-6-B

Prices and Components

6.6. Prices, Components, Firm Price, and Variable Price

1. **Prices:** The prices should be arrived at independently, without restricting competition, any consultation, communication, or agreement with any other bidder or competitor.

2. **Without Undue profiteering**:

   a) The price quoted by Bidder shall not be higher than the controlled price fixed by law for the Goods, if any, or where there is no controlled price, it shall not exceed the prices or contravene the norms for fixation of prices if any, laid down by Government or where the Government has fixed no such prices or norms, it shall not exceed the price appearing in any agreement, if any, relating to price regulation by any industry. In any case, save for special reasons stated in the bid, if any, the price charged shall not be higher than the Maximum Retail Price (MRP).

   b) If the price quoted is higher than the controlled price in the sub-clause above, the Bidder shall specifically mention this fact in his bid, giving reasons for quoting a higher price(s). If he fails to do so or makes any misstatement, it shall be lawful for the Port either to revise the price at any stage to bring it in conformity with the sub-clause above or to terminate the contract for default as per the contract and avail all the remedies available therein in addition to other punitive actions for violation of Code of Integrity.

3. **Price Components:** The price Schedule should show all the specified components of prices. The price components for Goods offered from India and those offered from abroad should be indicated separately in the applicable Price Schedules. The components should include, as applicable, GST, transportation, insurance, and price of incidental Works/ Services, as and if mentioned in the Schedule of Requirements. For goods offered from abroad, the price components (indicating the currency, in the case of GTE) should include customs duty, marine insurance, freight, and agency commission, as applicable.

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

5. **Variable Price**:

a) In tenders with deliveries longer than 12 (twelve) months, a Price Variation Clause (PVC) may be provided to protect the Port's interests, particularly for high-value (more than Rupees three crore) procurements. However, even for shorter deliveries or lower value, 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 market prices fall.

b) Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula (to take care of the changes in the input cost of labour, material, and fuel/ power components) should be provided in the tender documents, to calculate the price variation between the base level and delivery date. It is best to proactively provide our own PVC formula and base dates of indices in the tender document to discourage different bidders from quoting different formulae and different base dates, which may lead to problems in bringing their prices on a common comparable footing.

c) The variations are to be calculated periodically (usually quarterly) by using indices published by Governments/ chambers of commerce/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 various applicable inputs, e.g., material/ fuel/ labour (for which reliable indices are available), in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further subdivided into various categories of material, for which cost indices are published.

d) **Essential elements of PVC**:

i) **Base Date & Time Lag**: The price agreed upon should specify the base date, that is, the month and year to which the contract/ bid price is linked, to enable variations to be calculated with reference to the price indices prevailing in that month and year. This base date should be a few weeks/ months (the period is called time-lag) prior to the last date of submission of bids when the last published price indices would be available. Time lag applies both for the base date and date of supply and must be specified in the Tender Documents;

ii) **Ignorable Variation**: 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) **Inordinate Variation**: In rare cases, prices may go up to such an extent that it may render the contract unviable for either party, thus frustrating the contract. Therefore, the price variation clause should provide for a ceiling (a percentage per annum or an overall ceiling or both, say 20%/ 25% of the original price) on price variations, beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Port under 'Frustration of Contract' provisions in the Tender Document/ Clause, for short-closing the contract. (A provision for this exists in the Model Tender Document for Procurement of Goods – clause 12.2.2). However, if the short closing is not in the interest of the Port, the competent authority, with the concurrence of finance, may allow the continuation of the contract by relaxing/ removing the cap on the price variation.

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 recoverable on the price as varied by the operation of the PVC;

vi) No upward price variation will be admissible beyond the originally scheduled delivery date for defaults on the part of the supplier (e.g., when an extension of the delivery date is with LD). However, the Port would avail a downward price variation as per the denial clause in the letter of extension of the delivery period;

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

viii) The clause should also contain the mode and terms of payment of the price variation admissible.

ix) 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.

x) An illustrative PVC clause is available in Annexure 18.

6.7. Exchange Rate Variation (ERV)

1. In case of domestic tender contracts involving substantial import content (say >25% of the total price) and having a long delivery period (exceeding one year from the date of the contract), an appropriate Exchange Rate Variation (ERV) clause may be formulated by the Port in consultation with Finance, as needed, and incorporated in the tender enquiry document. In that clause, the bidders are to be asked to indicate import content and the currency (ies) used for calculating the value of import content(s) in their total quoted price. The bidders may be asked to indicate the base exchange rate for each such foreign currency used for converting the foreign exchange content into Indian Rupees, as well as the extent of foreign exchange rate variation (ERV) risk they are willing to bear.

2. To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the deadline of bid submission (or seven days prior to it – the Port has to adopt a suitable date). The variation may be allowed between the above base date and the date of remittance to the foreign principal/ mid-point of manufacture of the foreign component (the Port has to choose the appropriate date). The applicable exchange rates as above will be according to the "Bill currency selling" exchange rate as quoted by a source as specified (if not specified, authorised exchange bankers approved by RBI) in the tender document 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 2.5% per cent (or any other percentage fixed by Port). ERV shall be applicable only for components used to manufacture supplied Goods imported after the contract date.

3. Any increase or decrease in the landed price of import content (including customs duty) by reason of the variation in the rate of exchange shall be charged to the Port's account during the original delivery period. 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 the Port.

4. Documents for Claiming ERV

   a) A bill of ERV claim enclosing the working sheet;

   b) Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;

   c) Copies of the import order placed on the supplier

   d) Supplier's invoice for the relevant import order.

6.8. Statutory Taxes/ Duties/ Levies

6.8.1 Goods and Services Tax (GST)

1. **GST Registration Status and GSTIN** (15-digit registration number):

   a) All the bidders/ Bidders should ensure that they are GST compliant and that their quoted tax structure/ rates are as per the GST Act/ Rules.

   b) Bidder should be registered under GST and furnish their GSTIN number and GST Registration Certificate in their offer unless they are specifically exempted from registration under a specific notification/ circular/ section/ rule issued by statutory authorities.

   c) If the bidder has multiple business verticals in a state and has separate registrations for each vertical, the GSTIN of each vertical concerned with the suppiy and service involved, as per the scope of the Schedule of Requirements and Price Schedule, shall be quoted.

   d) If the supply/ service is from multiple states, the bidder should mention GST registration numbers for each state separately.

   e) **Composition scheme:** If the Bidder has opted for a composition levy under Section 10 of CGST, he should declare the fact while bidding along with GSTIN and GST registration certificate.

   f) **Exemption from Registration:** If a bidder is not liable to take GST registration, i.e., having turnover below threshold, he shall submit undertaking/ indemnification against tax liability. The bidder claiming exemption in this respect shall submit a valid certificate from a practising Chartered Accountant (CA)/ Cost Accountant with the Unique Document Identification Number (DIN) to the effect that the bidder fulfils all conditions prescribed in notification exempting him from registration. Such bidder/ dealer shall not charge any GST and/ or GST Cess in the bill/ invoice. In such case, applicable GST shall be deposited under Reverse Charge Mechanism (RCM) or otherwise as per GST Act by the Port directly to concerned authorities. Bidder should note that his offer would be loaded with the payable GST under the RCM. Further, the bidder should notify and submit to the Port within 15 days of becoming liable for registration under GST.

   g) Bidders must also consider the benefits of input tax credit under the GST legislation, as amended from time to time, on Input goods/Capital goods / Input Services while quoting the prices.

   h) In their bids, the bidders shall indicate the details of their GST Jurisdictional Assessing Officers (Designation, address, email ID). In case of a contract

award, the Port shall immediately forward a copy of the LOA/Purchase Order to the Jurisdictional Assessing Officer mentioned in the bidder's bid.

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

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

a) If provided in the Tender Document, the HSN (Harmonized System of Nomenclature) code for the goods is only indicative. The bidder shall be responsible for ensuring that they quote the correct HSN Code and corresponding GST rate for the goods they offer.

b) As per the GST Act, the bid and contract must show the GST Tax Rates (and GST Cess if applicable) and GST Amount explicitly and separately from the bid/ contract price (exclusive of GST). So, if a Bidder asks for GST (and GST Cess if applicable) to be paid extra, the rate and nature of such applicable taxes should be shown separately. Bidders should quote 'GST' if payable extra on the total basic rate of each cost element and quote GST in '%' inclusive of cess.

c) If the price is stated to include GST, the bidder must declare the current GST rate (and GST Cess, as applicable) included in the price.

d) If GST, other taxes, or duties are not specified, or the column is left blank in the price schedule, it shall be presumed that no such tax/ levy is applicable or payable by the Port. No Statutory Variation in GST shall be paid in such a case.

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

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

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

a) **Personal and Corporate Tax:** Bidder shall bear all Personal/ Corporate taxes imposed on owners/ company/ Joint Venture/Subcontractors or their employees.

b) **Taxes on Sub-Contractors, Vendors:** Bidder shall bear all taxes, including GST, as may be imposed on Contractor or supply-chain (sub-Contractors, Vendors, etc.).

c) **Duties/ Taxes on Raw Materials:** The Port is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

5. **Applicability to Imported Goods/ Services**:

Following the implementation of GST, the import of commodities shall not be subject to erstwhile applicable duties like safeguard duty, education cess, basic customs duty, antidumping duty, etc. All these supplementary customs duties are subsumed under GST. If imported into India, the supply of commodities, services, or both shall be considered as supply under inter-state commerce/ trade and shall attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Customs Assessable Value' plus the 'Basic Customs duty applicable thereon.'

6.8.2 Customs Duty on Imported Goods

1. Regarding imported goods, the bidder shall specify the rate and the total amount of customs duty payable thereon. Bidder shall also indicate the corresponding Indian Tariff Classification (ITC-HS) applicable for the Goods in question. Any material imported directly from the supplier or manufacturer should be under the name of the Port. In this regard, all formalities will be completed by the Port by engaging a Customs House Agent (CHA) and bearing the cost thereof.
2. The Government has allowed exemption from payment of customs duty on certain types of goods for use by the following organisations:
   a) Scientific and technical instruments imported by research institutes;
   b) Hospital equipment imported by Government hospitals;
   c) Consumable goods imported by a public-funded research institution or a university.
3. However, to avail of such exemptions, the Port is required to produce a "Customs Duty Exemption" certificate and a "Not Manufactured in India" certificate at the appropriate time.
4. The Manufacturing and Other Operations in a Warehouse Regulations (MOOWR) Scheme 2019 was introduced by the Central Board of Indirect Taxes and Customs (CBIC) to promote India as a global manufacturing hub and bolster the "Make in India" initiative. This scheme allows importers to bring raw materials and capital goods into the country without paying customs duties. Notably, the MOOWR Scheme is unique in that it is delinked from export obligations, extending benefits even to importers who intend to use goods for sale within the

domestic market. These imported materials can then be utilized for manufacturing and other operations within private bonded warehouses. Under the MOOWR Scheme:

a) Import duty is deferred when raw materials and capital goods are imported into India.

b) If these materials are used for exports, the deferred duty is exempt.

c) If the inputs are utilized for goods sold in the domestic market (i.e., Domestic Tariff Area), import duty for such inputs used for domestic clearance must be paid.

d) Import duty on capital goods is paid if they are cleared for the domestic market.

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

6.8.3 Deduction of Income Tax, Service Tax, etc, from Payments

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

6.8.4 Statutory Variation Clause:

Please refer to para 9.5.3 below.

6.9. Incoterms, 2020 Terms of Delivery

Table 1: Incoterms and their applications	
INCOTERMS Options	**Applicable to**
Rules for any mode of transport	
EXW – Ex-Works (named place of delivery)	The seller makes the goods available at their premises or another named place.
FCA – Free Carrier (named place of delivery)	The seller delivers the goods, cleared for export, at a named place to a carrier or to another party nominated by the buyer.
CPT – Carriage Paid To (named place of delivery) (earlier C&F – cost and freight)	The seller is responsible for export clearance and freight costs for carriage to the named place of destination.
CIP – Carriage and Insurance Paid to (named place of delivery)	In addition to CPT responsibilities, the seller is required to obtain insurance for the goods while in transit for 110% of the contract value under Institute Cargo Clauses (A) of the Institute of London Underwriters.

DAP – Delivered At Place (named place of delivery)	the seller delivers the goods, ready for unloading, at the named place of destination
DPU – Delivered at Place Unloaded (named place of delivery)	In addition to DAP responsibilities, the seller is required to unload the goods at the named place of destination. (Earlier DAT - Delivered At Terminal)
DDP – Delivered Duty Paid (named place of delivery)	In addition to DAP responsibilities, the seller is required to clear the goods through customs and pay import duties and taxes.
Rules for sea and inland waterway transport	
FAS – Free Alongside Ship	alongside the buyer's vessel at the named port of shipment, the seller is to clear the goods for export. However, if the parties wish the buyer to clear the goods for export, explicit wording should be added to the contract.
FOB – Free On-Board	seller to arrange for export clearance and deliver goods on board a vessel that is to be designated by the buyer.
CFR – Cost and Freight	In addition to FOB responsibilities, The seller pays for the carriage of the goods up to the named port of destination.
CIF – Cost, Insurance and Freight	In addition to CFR responsibilities, the seller is required to obtain insurance for the goods while in transit for 110% of the contract value under Institute Cargo Clauses (A) of the Institute of London Underwriters.

1. In use since 1936, Incoterms have been last revised in 2020. Out of the 11 Incoterms options, seven apply to all modes of transportation, whereas four apply only to sea and inland waterway transportation.

2. Incoterms rules 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 in time. This may be different from the actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to the 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 the following:

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

   b) Carrier selection, transfers, and related issues;

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

d) Documentation, problem resolution and other related issues.

3. The options range from one extreme – the buyer takes full responsibility from the point of departure – to the other extreme: the seller is responsible all the way through delivery to the buyer's location (Annexure 19).

4. Certain terms have special meaning within Incoterms as defined below:

   a) Delivery: The point in the transaction where the risk of loss or damage to the goods is transferred from the seller to the buyer

   b) Free: Seller has an obligation to deliver the goods to a named place for transfer to a carrier

   c) Carrier: Any person who, in a contract of carriage, is nominated by seller/ buyer for transport by any mode.

   d) To clear for export: To file the Shipper's Export Declaration and get an export permit.

5. Within national transportation, certain terms have assumed acceptance due to usage. Free on Rail (FOR) has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in DAP above). On similar lines, infrequently, Free on Truck (FOT) is also used in road transport.

6.10. Recovery of Public Money from Suppliers' Bill

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

6.11. Payment against Time-Barred Claims

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

Chapter-7

Bid Evaluation

7.1. Bid Evaluation Process

1. The evaluation of bids is one of the most significant processes of procurement and must be transparent. All bids are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their bids. No hearsay information or hitherto undeclared condition should be brought in while evaluating the bids. Care should be taken to ensure that preferences provided to any category of bidders on certain specified grounds do not result in a single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the bids. The aim should be to ensure that no bidder gets undue advantage at the cost of other bidders and/or at the cost of Port.

2. **Tender Committee**:

   a) For all cases having financial implications of more than Rs. 50 (Rupees Fifty) lakhs, a Tender Committee (TC or called Tender Evaluation Committee TEC) to evaluate the bids should normally comprise three members, including a finance member (nominated by the HoD of Finance) and a representative of the user, as per SoPP. TC should not be large as it may slow down the evaluation process. However, suitable domain/ technical experts may be included in the committee to render assistance in the evaluation of the bids. There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. The representative of the procuring department will work as a convenor (Member Secretary) of the TC. The TC shall be responsible for all aspects and stages of the tender evaluation. Tender committees may be constituted with the approval of one level higher than the competent authority. It is advantageous for Port doing procurements regularly to have pre-nominated (by designation) Tender committees for various categories and value-slabs of procurements included in the SoPP.

   b) 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 the estimated value of the procurement exceeds Rs. 50 lakhs. This provision should be ensured in the constitution of all purchase committees, irrespective of the value of procurement. The Tender Committee to consider bids may be so constituted that an authority holding powers for

recommending the bids by virtue of his position as a member of the Tender Committee shall not also be the accepting authority for such tenders.

c) The member secretary of the Tender Committee (or competent authority, in direct acceptance cases) shall receive the bids opened along with other documents from the Bid Opening Committee and be responsible for the safe custody of the documents and for finalising the Procurement. The bid evaluation process is described in the subsequent paragraphs of this chapter.

3. **Schedule of Procurement Powers (SoPP)**:

a) There are delegations up to a threshold value (called direct acceptance threshold) below which the evaluation of the Bids may be entrusted solely and directly to the individual competent authority, without the involvement of a Tender committee or any evaluation report. He would carry out all the steps in the evaluation described below instead of the TC and directly record reasons and decisions in the file itself (or online, where such systems exist). He may ask for a Technical Suitability report from user departments if needed.

b) In procurements (including nomination and SLTE modes) above such a threshold, evaluation is to be done by a Tender Committee as mentioned in sub-para 2) above.

c) Competent Authority (authority competent to approve the procurement of that value as per the SoPP)'s written approval must be taken at various stages of procurement before proceeding ahead, e.g.:

i) Administrative/ financial sanctions/ Issue of tender including Tender Documents

ii) Approval of Techno commercial evaluation and Opening of price bids in case of a packet system and similar approvals in case of PQB modes and Two Stage Tendering.

iii) Price Negotiations if permitted under specified circumstances.

iv) Approval of Financial Evaluation and Award of contract to the selected bidder(s)

v) Cancellation of Procurement and Re-tendering

vi) In some particular decisions during Contract execution, e.g., the exercise of the option clause or any variation beyond the laid down %age, forfeiture/ release of performance securities, premature termination/ foreclosure of Contract, etc.

d) Wherever such competent authority is a Board of Directors in a CPSE, obtaining approvals at so many stages from them may delay the process

and unnecessarily overburden them. Therefore, in such cases, their approval may only be obtained at the "Approval of Financial Evaluation and Award of contract." Powers for approvals at intermediate stages may be delegated to appropriate levels in such cases.

e) The Port should lay down a Schedule of Procurement Powers (SoPP) detailing such thresholds. It can also lay down the powers, jurisdiction, and composition of various levels of the Tender Committee and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. A suggested format for SoPP is in Annexure 4; however, the exact values of thresholds may have to be decided by the Port in conformity with DFPR.

7.2. Preparation and Vetting of Comparative Statement

The proponent department should prepare a comparative statement of all the quotations/bids (Technical and Financial) received in the order in which bids were opened. In the case of a Techno-commercial bid, the comparative statement will have information about deciding the responsiveness and eligibility of bids and evaluating the technical suitability of offers. In the case of a financial bid, it would have information about rates quoted (including taxes), discounts, if any, and any other information that has implications on the ranking of bids, etc. The concerned officers should sign the comparative statement so prepared. It may also be vetted by Finance for veracity of information.

7.3. Preliminary Examination

7.3.1 Unresponsive Bids

A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Other bids shall be treated as unresponsive and ignored. All bids received shall first be scrutinised to identify unresponsive bids, if any. Some important points based on which a bid may be declared as unresponsive and be ignored during the evaluation are:

1. The bid is not in the prescribed format or is unsigned or not signed as per the stipulations in the tender document;
2. The required EMD has not been provided, or exemption from EMD is claimed without acceptable proof of exemption;
3. The bidder is not eligible to participate in the bid as per the eligibility criteria that have been laid down (including conflict of interest and other provisions of CIPP). In case procurement is on a limited tender basis or where procurement is

restricted to pre-approved vendors, it should be especially ensured that there is no conflict of interest;

4. The bidder has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;
5. The bid departs from the essential requirements specified in the tender document (for example, the bidder has not agreed to give the required performance security) or
6. Against a schedule in the list of requirements in the tender enquiry, the bidder has not quoted for the entire requirement as specified in that schedule (for example, in a schedule, it has been stipulated that the bidder will supply the equipment, install, and commission it and also train the purchaser's operators for operating the equipment. The bidder has, however, quoted only for the supply of the equipment).
7. Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the Tender Document.
8. The bid validity is shorter than the required period. However, in case of STE/ PAC procurement, shorter bid validity may be accepted.
9. Non-submission or submission of illegible scanned copies of stipulated documents/ declarations, if so stipulated in the Tender Document.

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 words. This situation normally does not arise in the case of eprocurement. This should be taken care of in the manner indicated below:

1. If, in the price structure quoted for the required goods, there is a 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;
2. 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.
3. If there is a discrepancy between words and figures, the amount in words shall prevail.
4. Such a discrepancy in an offer should be conveyed to the bidder, asking him to respond by a target date, as per para 7.3.5 below. If the bidder does not agree to the Port's observation, the bid is liable to be rejected.

7.3.3 Discrepancies between Original and Additional/ Scanned Copies of a Bid

Normally, as far as feasible, no submission of original documents in physical format (other than Cost of Tender Documents, if any, (refer to para 5.2.1 - Availability and Cost of Tender Documents), Bid Security and statutory certificates if any) should be asked for in eProcurement. In e-procurement, there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. In offline tenders, discrepancies may be observed between the original copy and other copies of the responsive bids. If discrepancies exist between the uploaded scanned or other copies and the originals submitted by the bidder, the original copy's text, etc., shall prevail. Here, this issue is also to be addressed with the bidder in the same manner as above (refer to para 7.3.5 below), and subsequent actions shall be taken accordingly. Any substantive discrepancy shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in addition to other punitive actions under the Tender Document for violation of the Code of Conduct.

7.3.4 Deviations/ Reservations / Omissions - Substantive or Minor

1. During the evaluation of Bids, the following definitions apply:
   a) "Deviation" is a departure from the requirements specified in the Tender Document;
   b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document.
   c) "Omission" is the failure to submit part, or all of the information or documentation required in the Tender Document.
2. **Substantive Deviations:** A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered a substantive deviation as per the following norm, and the rest shall be considered a Minor deviation:
   a) Which affects in any substantive way the scope, quality, or performance of the product;
   b) Which limits in any substantive way, inconsistent with the Tender Document, the Port's rights, or the Bidder's obligations under the contract; or
   c) Whose rectification would unfairly affect the competitive position of other Bidders presenting substantively responsive Bids.
3. The decision of the Port shall be final in this regard. Bids with substantive deviations shall be rejected as nonresponsive. However, bids with deviations may be accepted in case of STE/ PAC procurement with approval of Competent Financial Authority, with reasons recorded for accepting such deviations.

4. Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the Goods specified in the Tender Document shall not influence evaluation Bids. If the bid is otherwise successful, the Port shall avail of such benefits, and these will become part of the contract.

5. During the preliminary examination, some minor infirmity and/or irregularity and/or nonconformity may also be found in some bids. Such minor issues could be missing pages/attachments, illegibility in a submitted document, or non-submission of the requisite number of copies of a document.

6. **Considering Minor Deviations:** There have also been cases where the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of the document. The court ruled that this was a minor irregularity. The court has consistently taken the view that the Port is entitled to consider and allow minor deviations that do not amount to substantive deviations. The Port reserves the right to accept bids with such minor issues provided they do not constitute any substantive deviation, do not have a fiscal impact, do not prejudice, or affect the ranking order of the bidders and do not grant the bidder any undue advantage vis-à-vis other bidders and the Port. Wherever necessary, the Port shall convey its observation on such 'minor' issues to Bidder as per para 7.3.5 below. If the Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

7.3.5 Clarification of Bids/Shortfall Documents

1. During the 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/ courier/ email, asking the bidder to respond by a specified date, mentioning therein that if the bidder does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such bids are to be ignored or considered further. No change in prices or substance of the bid, which may grant any undue advantage to such bidder, shall be sought, offered, or permitted. No post-bid clarification at the initiative of the bidder shall be entertained.

2. The Port reserves its right to, but without any obligation to do so, seek any shortfall information/ documents only in case of historical documents that pre-existed at the time of the Bid Opening, and which have not undergone change since then and does not grant any undue advantage to any bidder. Provision may be made by e-Procurement portals for requesting Short-fall documents from the bidders. The system may further allow shortfall documents to be taken from any bidders only once after the technical bid opening. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the bidder has not provided them, these documents may be asked for with a target

date as above). As far as the submission of documents is concerned regarding qualification criteria, after submission of the bid, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for to qualify the bidder.

7.3.6 Contacting Port officials during the evaluation

From the time of bid submission to awarding the contract, no Bidder shall contact the Port officials on any matter relating to the submitted bid. If a Bidder needs to contact the Port officials for any reason relating to this tender and/ or its bid, it should do so only in writing or electronically. The Port shall keep these communications in view during the evaluation of bids but is not expected to respond until the evaluation is complete. Any effort by a Bidder to influence the Port during the processing of bids, evaluation, bid comparison or award decisions shall be construed as a violation of the Code of Integrity, and the bid shall be liable to be rejected as nonresponsive in addition to other punitive actions for violation of Code of Integrity as per the Tender Document.

7.3.7 Evaluation of eligibility:

Port shall determine, to its satisfaction, whether the Bidders are eligible as per the eligibility criteria in the Tender Document to participate in the Tender Process. Tenders that do not meet the required eligibility criteria prescribed shall be rejected as unresponsive.

7.4. Evaluation of Responsive Bids and Decision on Award of Contract

7.4.1 Introduction

1. Only substantively responsive bids shall be evaluated further.
2. The TC evaluates all responsive bids with a view to selecting the lowest (L1) bidder who meets the eligibility/ qualification criteria and techno-commercial aspects.
3. In the case of single-stage, single-envelope tendering, the evaluation of the qualification of bidders, as well as technical, commercial, and financial aspects, is done simultaneously.
4. In single-stage multiple envelopes, initially, only the techno-commercial bids would be opened and evaluated for bids that successfully meet the qualification criteria and techno commercial aspects. Financial bids of such successful bidders would only be opened for selecting the L1 bidder among these, and in the case of off-line tenders, financial bids of unsuccessful bidders would be returned unopened to them. It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids must be ensured before their opening. In off-

line tenders, all the financial bids may preferably be put in a large envelope, which may be dated, sealed, and signed (including by some of the bidders present) to show that none of the bids were accessed during the custody.

5. In two-stage bids, the PQB/ EoI stage would have already been evaluated as detailed in Chapter 4, and this second stage is for evaluation of responses from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

7.4.2 Evaluation of Eligible Techno-commercial Bids

1. **Evaluation of Qualification Criteria:**

   a) In evaluating the techno-commercial bid, conformity to the eligibility/ qualification criteria, technical specifications, and Quality Assurance; and commercial conditions of the offered Goods to those in the Tender Document is ascertained. Additional factors incorporated in the Tender Document shall also be considered in the manner indicated therein. This determination will, inter-alia, consider the bidder's financial, technical, and production capabilities to satisfy all Port's requirements as incorporated in the tender document. Such determination of qualification criteria shall be based upon scrutiny and examination of all relevant data and details submitted by the bidder in its bid, as well as such other allied information as deemed appropriate by the Port. The determination shall not consider the qualifications of other firms such as the Bidder's subsidiaries, parent entities, allied firms, subcontractors (other than specialized subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

   b) The condition of prior turnover and prior experience may be relaxed (Notified vide OM No.F.20/2/2014-PPD (Pt.) issued by Department of Expenditure dated 20.09.2016) for Startups (only to startups recognized by the Department of Industry & Internal Trade (DPIIT)) subject to meeting quality & technical specifications and making suitable provisions in the tender document (*Rule 173 (i) of GFR 2017*). Startups may be MSMEs or otherwise. Such relaxation can be provided in the case of procurement of works as well. It is further clarified that such relaxation is not optional but has to be ensured, except in case of procurement of items related to public safety, health, critical security operations and equipment, etc) where adequate justification exists for the Port not to relax such criteria.

2. **Evaluation of Technical Suitability:** The description, specifications, drawings, and other technical terms and conditions are examined by TC in general and by 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 bidder. It is important to judge whether an exception/deviation is minor or major. Minor exceptions/deviations may be waived following the criteria laid down in para 7.3.4-6 above.

3. **Evaluation of Bid involving Sample/ Demos**: (Please refer to para 2.2.1-9, discouraging evaluation of samples/ demos after bid opening). Evaluation of Techno-commercial bids should not be done based on the evaluation of samples or demos, in view of the subjectivity involved. If a Port's reference sample has been displayed for prospective bidders to illustrate the desired indeterminable characteristics, the contract should mention that final supplies must meet such characteristics of the reference sample in addition to the specifications/drawings. If required, a provision for the submission of a pre-production sample matching the Port's reference sample by the successful bidder(s) may be stipulated before giving clearance for bulk production of the supply. Para 5.3-3-(g) should be followed during the bid-opening process. There should be a time limit for submission and approval of pre-production sample. In case the contractor is not able to come up with a satisfactory pre-production sample matching the Port's reference sample within the stipulated time-limit or a reasonable extension thereof, a provision should be provided for cancellation of the contract without repercussion on either side.

4. **Evaluation of Commercial Conditions:** Bidder must comply with all the Commercial and other clauses of the Tender Document. The Port shall also evaluate the commercial conditions quoted by Bidder to confirm that all terms and conditions stipulated in the Tender Document have been accepted without substantive omissions/ reservations/ exception/ deviation by the Bidder. Deviations from or objections or reservations to critical provisions identified in the Tender Documents will be deemed to be a material deviation. If critical provisions are not explicitly stated in the Tender document, then these shall be taken to be Governing laws and Jurisdiction, Contractor's Obligations and Restrictions of its Rights, Performance Bond/ Security, Force Majeure, Taxes & Duties, and Code of Integrity). Only minor deviations may be accepted/allowed, provided these do not constitute substantive deviations as per para 7.3.4-2 above.

5. **Declaration of Successful Bidders:** In a single envelope/cover tender, TC proceeds to evaluate the price aspects without a reference to Competent Authority at this stage. However, in case of a multiple envelop tender, the TC prepares a recommendation for a techno-commercial bid (Annexure 14) to declare successful bidders. For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the Tender Documents and comment on their

acceptability. The Competent Authority may ask the TC to explain the report but should not request that evaluation be changed. It should review the TC's evaluation of each proposal (on technical, contractual, and other aspects). The Competent Authority should decide how any acceptable deviation in each proposal should be handled during contract formulation, in case that proposal is ranked first. The technical evaluation report is a confidential document, and its contents shall not be disclosed. All records relating to the evaluation shall be retained until completion of the project and its audit. In such cases, after the approval of Competent Authority, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). In the case of two-packet or two-stage tendering, Bid securities of unsuccessful bidders during the first stage, i.e., technical evaluation, etc., should be returned within 30 days of declaration of result of the first stage, i.e., technical evaluation etc, in terms of Para 6.1.1. The date/ time and place (or on the portal in case of e-procurement) are announced for the opening of Financial Bids in the presence of technically suitable bidders who are willing to attend the bid opening. Such a date should be two to five (5) days after the announcement.

7.5. Evaluation of Financial Bids and Ranking of Bids In general:

1. Unless otherwise stipulated, evaluation of the financial bids shall be on the price criteria only. Financial Bids of all Techno-commercially suitable bids are evaluated and ranked to determine the lowest priced bidder, based on the total outgo from the buyer's pocket (please refer to para 6.6-3 – including GST, transportation, insurance, price of incidental Works/ Services, customs duty, marine insurance, and freight, agency commission, as applicable). For CPSE availing Input Tax Credit, the price shall be "Net of GST", considering the Input Tax Credit on the GST portion to be availed by the CPSE.

2. **Evaluation of Multiple Schedules/ Requirements:** Whether evaluation shall be done destination-wise/ item-wise/ Schedule-wise or on the total of all destinations/ items/ schedules would depend on evaluation criteria in the Tender Document.

    a) In case the list of requirements contains more than one schedule/ package, the responsive, technically suitable bids shall be evaluated and compared separately for each schedule. The bid for a schedule will not be considered if the complete list of goods in that schedule is not included in the bid. However, bidders have the option to quote for any one or more schedules and offer unconditional discounts for individual schedules.

    b) If there is only a list of items without grouping into schedules, evaluation of the financial ranking of bids shall be done for each item separately, and Bidder has the option to submit its quotation for any one or more items and

also to offer unconditional discounts for individual items. However, Bidder shall quote for all the destinations included in an item quoted,

c) if there is only one item in the schedule of requirements with several destinations, evaluation of the financial ranking of bids shall be done separately for each destination included in that item, and the Bidder has the option to submit its quotation for any one or more destinations and, also, to offer unconditional discounts for individual destinations.

d) Discounts mentioned in a) to c) above, wherever applicable, shall be considered for deciding the lowest evaluated bid for schedules/ items/ destinations, respectively. However, any conditional discounts are not considered for the ranking, as detailed in sub-para 9) below.

3. Unless explicitly announced beforehand in the tender documents, the quoted price should not be loaded based on deviations in 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 Port 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 tender 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 document so that the bidders are aware of it and quote accordingly. While evaluating such offers, these aspects must also be considered. 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;

4. Unless otherwise stipulated, the comparison of the responsive bids shall be on total outgo from the Port's pocket for the procurement to be paid to the supplier or any third party, including all elements of costs (please refer to para 6.6-3)) as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore, it should normally be on a CIF/ FOR destination basis, duly delivered, commissioned, as the case may be:

a) In the case of goods manufactured in India or goods of foreign origin already located in India, GST, and any other duties/levies, etc., which will be contractually payable (to the bidder) on the goods are to be added;

b) 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 bidder) on the goods, are to be added (please refer to para 7.5.2 below);

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

6. If the bids have been invited on a variable price basis, they will be evaluated, compared, and ranked based on the position prevailing on the deadline of bid submission and not based on any future date. If a Bidder submits a firm price quotation against the requirement of a variable price quotation, that bid shall be prima facie acceptable and considered further, taking the price variation asked for by the Bidder as nil.

7. Rarely, there may be a tie at the lowest bid (L-I) position between two or more start-up/ non-start-up bidders. It must be first determined whether it is a case of Cartel formation or anti-competitive practices, as per para 7.6.8 below, and if so, it shall be dealt with accordingly.

   a) If this is not a case of cartel formation, in such cases the decision will be taken in the following manner:

      i) In case one of the L1 bidders is MSE owned by SC/ST or a Women Entrepreneur, then 25% quantity order reserved for MSEs will be placed on the MSE owned by SC/ST or a Women Entrepreneur subject to fulfilment of other tender conditions.

      ii) If one of the L1 bidders is MSE, other than MSE owned by SC/ST or a Women Entrepreneur then an order shall be placed on such MSE bidders.

      iii) In all other scenarios, the order shall be placed on the L1 bidder having a higher turnover in the previous financial year. In case there is a tie at the lowest bid (L-1) position between only startup bidders and none of them has past turnover, the order will be placed on the startup that was registered earlier with the Department of Industrial Promotion and Policy.

   b) For Tenders issued through the GeM Portal: The tie-breaker methodology available on the GeM portal is to be followed.

8. 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;

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

7.5.1 Evaluation of Concurrent Application: MSE and Make-in-India Policies

The concurrent application of the two procurement preference orders, i.e., the MSE Procurement Order of 2012 and the PPP-MII Order, may create confusion for the Port on how to evaluate the bids falling within the purview of both policies. To bring predictability both to the Port and bidders, DoE has issued guidelines (Notified vide OM No.F.1/4/2021-PPD issued by Department of Expenditure dated 18.05.2023), in this regard. These guidelines are explained in Annexure 34, along with examples in the annex thereto.

7.5.2 GTE Tenders

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

Currency of Bid: In GTE (Global Tender Enquiry), foreign bidders have the flexibility to quote prices and receive payments in either Indian Rupees or freely convertible currencies such as US Dollars, Euros, Pound Sterling, Yen, other relevant currencies (The Central Board of Indirect Taxes and Customs in India (CBIC) issues Exchange Rate Notification under Customs Act, 1962, which lists currencies and exchange rates for imported goods in Schedule I – which may indicate relevant currencies for indicate. The current notification is Exchange Rate Notification No. 30/2024 - Customs (N.T.), or a combination thereof. However, prices for goods works, or services (including Agency Commission) performed or sourced in India must be quoted and paid for in Indian Rupees. Indian bidders are required to quote in INR only. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the deadline of bid submission, quoted by a source as specified (if not specified, authorised exchange bankers approved by RBI) in the tender document.

1. **Evaluation of Offers**:

    a) Import of Goods or services or both attract integrated tax (IGST). The IGST rate and GST cess shall be applicable on the 'Customs Assessable Value' plus the 'Basic Customs duty applicable thereon.' The offers would be compared based on the principle of the total outgo from the Port's pockets, including all applicable taxes and duties (Customs duty, IGST, and GST Cess).

    b) The foreign bidders are normally asked, in the tender documents, to quote both on a FAS/FOB basis and also on a 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 indicate the customs tariff number and customs 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 DDP/ FOR/ (FOT) destination cost, the following is to be added over and above CIF: one per cent as port handling charges; customs duty, countervailing duty, and surcharges, as applicable on the date of opening of the bid; clearing agency

charges; inland freight and GST, as assessed. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from the Port's bankers) should also be loaded. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be made based on DDP/FOR/FOT destination, including all applicable taxes and duties (on the principle of the total outgo from the Port's pockets). In case there are no domestic bidders, a comparison of offers can be made based on CIF/landed costs since the rest of the costs would be the same for all bidders.

7.5.3 Evaluation in Rate Contracts

1. If stipulated in the Tender Documents that this is a Tender Process to enter "Rate Contract(s)" for the supply of Goods, then additional clauses (including Performance Security, Fall Clause, etc) shall be incorporated therein, and the evaluation would be done accordingly (please refer to para 4.4.1-3 above).
2. Procedures stipulated in this chapter for evaluation of bids and award of contract shall be applicable mutatis mutandis in the finalisation of rate contract. The procedure for negotiations/counter-offers and splitting of contracts (parallel contracts) is slightly different in Rate Contract as per sub-para below. One-time or standing approval of the Board may be taken for this procedure.
3. Port reserves the right to conclude more than one rate contract for the same Schedule/ Goods. The procedure for negotiation and counter-offering for concluding parallel rate contracts could be as follows.
    a) Initially, the rate contract would be awarded to the L-1 Bidder. Then the price of L-1 shall be counter-offered to the higher quoting responsive Bidders (under intimation to L-1), asking them to send their revised Bids online on the e-procurement portal to be opened at a specified place, date, and time (as per the standard procedure). L-1 Bidder would be specifically informed that it may, if it desires, reduce its price, and send its revised bid accordingly. The Bidders who accept the counter-offered rate or rate lower than that would be awarded parallel rate contracts. If L-1 Bidder lowers its rate in its revised offer, the same would also be accepted with effect from that date, and its rate contract would be amended accordingly.
    b) Price Negotiation with the bidders should be severely discouraged. However, in the case where parallel rate contracts are necessary, even if the lowest responsive bidder (L-1) price is not reasonable, negotiation may be conducted with the L-1 bidder in the first instance. If the L1 Bidder agrees to bring down the price to the desired level, a rate contract would be concluded with it, and parallel rate contracts would be concluded as per the

sub-para above. If, however, L1 Bidder does not agree to reduce its price in the first instance itself, then the price, which has been decided as reasonable, shall be counter-offered to all the higher quoting responsive Bidders (including L-1) for further action on the above lines.

c) All such parallel rate contracts would be released transparently and simultaneously.

4. If stipulated in the Tender Document, in the case of Vehicles, Machine Tools, Information Technology Products, OEM/ specialised equipment, and their spares/consumables and similar other such products, where the design feature, performance parameters, etc. of such products/ goods or services differ significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products or services is not feasible, Rate Contracts may be concluded on %age rebate on Net Dealer Price (NDP) or MRP basis, generally known as Catalogue basis.

5. **Period of Rate Contract**: A Rate Contract shall be for the period specified in the tender document (or one year if not so specified).

7.6. Deliberations by the Tender Committee for Award of Contract.

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

Delays in finalising procurement deprive the public of the intended benefits and result in lost revenues and costs over-run. To enable timely decision-making, a tentative complete time schedule for finalising the tender process from the date of issuing the tender to the date of issuing the contract should be published in the tender documents. Every official in the chain of the procurement operation is accountable for acting within the time-schedule so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained by way of a system of Management Reporting (Appendix-GM-S2/A4 and A5). As a check, the proposed schedule of the tender process may be printed on the inside cover of the Procurement File, where the 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 2. Indicative time schedule

S.No.	Mode of Procurement	Indigenous	Imported
1	Open tender/ (e-tendering)	45days	60 days
2	Procurement through registered vendors/ (Special) limited tenders	30 days	45days
3	Proprietary basis/nomination basis	21days	30 days

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.

7.6.2 Extension of Bid Validity Period

1. The entire process of scrutiny and evaluation of bids, preparation of ranking statement and notification of award must be done expeditiously and within the original bid validity period (*Rule 174 (iii) of GFR 2017*).
2. If, however, due to some exceptional and unforeseen reasons, the Port is unable to decide on the placement of the contract within the original validity period, it may request, preferably before the expiry of the original validity period, all the responsive bidders to extend the validity of their bids up to a suitable period. They may also be requested to extend the validity of the Bid Security for the corresponding additional period. A bidder may not agree to such a request, and this will not entail forfeiture of its Bid Security. But the bidders who agree to extend the validity are to do so without changing any terms, conditions, and so on of their original bids. The procuring officers should record reasons for seeking an extension of bid validity at the time of taking such decisions.
3. In case such refusal by the bidder(s) to extend validity (or withdrawal of offer within validity as per para 5.2.5) happens:
    a) before completion of the Techno-commercial evaluation, then the Techno-commercial evaluation (including the withdrawn bids) shall be completed. If a withdrawn bid qualifies in techno-commercial evaluation, financial bid(s) of such bidders shall also be opened, and action shall be taken as per sub-para below.
    b) after the techno-commercial evaluation but before the completion of the financial bid evaluation, then the financial bid evaluation (including withdrawn bids) shall be completed. If a withdrawn bid happens to be the L1 bidder (lowest acceptable bidder, who is techno-commercially qualified for the supply of a bulk quantity and would have been awarded a contract, but for his refusal to extend validity), the tender must be retendered. However, such L1 price of the withdrawn bids shall not be taken as precedence for determining price estimates or reasonableness.

7.6.3 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. If so provided in the tender document, and if warranted, the tendered quantity can be increased or decreased by the percentage specified therein (15 (fifteen) %, if

percentage not specified) for ordering, at the discretion of the Port. Any larger variation may throw up issues about transparency.

7.6.4 Option clause

1. Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakhs, 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] may be incorporated in the tender document, reserving the Port'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 bidders. However, the Competent Authority may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in the continuity of supplies. The clause may be framed along the following lines:

   "The Port reserves the right to increase/decrease the ordered quantity by up to [25] per cent at any time, till the 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)."

2. The higher the option limit, the more uncertainty there is for the bidders in formulating their prices and the more chance of hedging the prices quoted to take care of such uncertainties; hence, the option limit should be carefully considered only in justifiable requirements. (Refer to para 9.2.2 for its application).

3. There should be no option clause in development orders;

4. The quantum of the option clause will be excluded from the value of tenders for the purpose of determining the level of Competent Authority in the original tender;

7.6.5 Splitting of Contracts/ Parallel Contracts

1. Unless otherwise stipulated in TIS/ AITB, there shall be no parallel orders or splitting quantities among more than one Bidders.

2. However, after due processing, if it is discovered that the quantity to be ordered is more than what the L1 bidder alone is capable of supplying and there was no prior declaration in the tender documents to split the quantities, then the quantity being finally ordered may be distributed among the other bidders in a manner that is fair, transparent and equitable based on objective data available in the bids, e.g. eligibility criteria, Quantity/ Delivery etc:

   a) As far as feasible, counteroffer the L1 rate to such firms.

b) If distribution at the counter-offered rate is not feasible, then distribution may be done at the rates quoted by such bidders if their rates are still within the zone of reasonableness.

3. In case of the 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 tender documents, clearly stating that Port reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of the lowest bidder (L1) contractor and the rest of the contractors/bidders should be clearly defined, along with the minimum number of suppliers sought for the contract. In the case of splitting in two and three, the ratio of 70:30 and 50:30:20, respectively, may be used – a different ratio may also be justified. These ratios are approximate, and the Port may marginally vary quantities to suit capacity/ past performance of the bidder/ unit loads of packing or transportation/ relative ranking of the bids/ delivery period offered/ existing load of Bidder and other similar factors affecting smooth supplies as per requirements. Since such predefined splitting of quantity can potentially encourage cartel formation, the Port may stipulate that the bidders must quote at least for a minimum percentage (say a minimum of the ratio of distribution – i.e., 30% or 20% in case of 70:30; 50:30:20 respectively) of the total tender quantity to be considered responsive bidder.

4. The following guidelines are to be considered while opting for parallel contracts in either case (sub-para 2 or 3 above):

a) L1 should be awarded at least the percentage mentioned above or his quoted quantity/ spare supply capacity, whichever is lower,

b) In case the quantity thus allocated for L1 is less than the prescribed percentage, higher percentages than those stipulated in the Tender document for L2 (and L3 bidders, and so on, as applicable) may be considered for allocation to cover the entire tender quantity.

c) 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 increased percentage as per the sub-clause above) or the quoted quantity/ spare supply capacity of the L2 bidder, whichever is lower and so on to other higher bidders. In case of non-acceptance of the counter-offer by the L2 party or in case of allocated quantity being short of L2's stipulated/ increased percentage, a similar offer shall be made to L3 and L4, and so on.

d) In case of shortfalls from the prescribed/ increased percentages, the percentage of allocation of bidders in sequence (L2, L3, etc.) may be proportionately increased (on the lines of sub-para b) above), and if

unavoidable, more bidders than the minimum number specified may be considered, to cover the entire tender quantity, keeping the sanctity of ranking of bidders. If it is still not possible to cover the entire tender quantity, there would be no alternative but to retender the uncovered quantity.

e) In case higher-priced bidders do not agree to match the L1 price, action as per sub para 2-b) above may be considered.

5. In either situation (sub-para 2. and 3. above), before splitting the quantity, distribution shall be subject to i) purchase preference to MSME and 'Class I Local Supplier' (under Make in India Order) and ii) rates of L1 being considered reasonable and if it is not reasonable, negotiation if permissible as per para 7.6.9, with the L1 party may be carried out before splitting of quantities, with the approval of the Competent Authority, otherwise there would be no alternative, but to retender the requirement.

7.6.6 Reasonableness of Prices

1. In every recommendation of the TC for an award of contract, it must be declared that the rates recommended are reasonable. If the rates received are considered abnormally low or unreasonably high, action may be taken as per para 7.6.7 and 7.6.9, respectively, or as per para 7.6.11, reject any or all Bids; abandon/ cancel the Tender process and issue another tender for the identical or similar Goods.

2. In large value tenders, blind reliance on the cost estimate is not recommended for assessing reasonableness. More than one method of estimation of cost may be used to triangulate a reasonable price. For more details on judging the reasonableness of prices, please see para 2.1-2-(f) above.

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

   a) The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately, and the comparison should be on basic price.

   b) 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;

   c) 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;

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

e) 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;

f) 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, and terms of the contract; these may be kept in view, and

g) 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."

7.6.7 Consideration of Abnormally Low Bids

1. An Abnormally Low Bid (ALB) is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. The Port may, in such cases, seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the tender document. If, after evaluating the price analyses, the Port determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the Port may reject the Bid/ Proposal and evaluate the next higher bidder (and so on), at his/ their own quoted rate (if considered reasonable, and not by the counter-offering rate of ALB), for the award of contract. However, it would not be advisable to fix a normative percentage below the estimated cost, which would automatically be considered an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of the tender document to safeguard against the submission of abnormally low bids from the bidders.

2. In the case of predatory pricing, Port may refer to the above consideration of abnormally low bids to assist themselves in the finalization of tenders (In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020).

3. No provisions should be kept in the Tender Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. Wherever there are compelling circumstances to ask for an Additional Security Deposit/ Bank Guarantee (BG) in the case of ALBs, the same should be taken only with the approval of the next higher authority competent to finalise the

particular tender or MD, whichever is lower (Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020).

7.6.8 Cartel Formation/ Bid Rigging

1. The Competition Act defines bid rigging as agreements that have the effect of eliminating or reducing competition or adversely affecting or manipulating the process of bidding. There are various forms of bid rigging - Collusive bidding (dividing the market, setting prices, or limiting production – involves misrepresentation of independent bids); Bid Rotation/ suppression; Complementary Bidding; etc. (Refer to Appendix-GM-S2/A2, para 6)
2. Cartels implement this anti-competitive bid-rigging. Sometimes, a cartel of bidders quotes equal/ marginally different rates (pool rates) against a tender, whereas possibly:
   a) Rates quoted (and breakup thereof) are equal, despite their manufacturing/ logistics costs being different due to their scale of production/ location.
   b) The rate manages to be L1.
   c) In a variation, the rates may not be exactly equal but may be close enough to make the Cartel members L1, L2, L3, etc.
   d) Respective quoted quantities by these bidders are much less than the tendered quantity, leaving no option but to distribute quantities among these bids.
   e) Their bids have other uncanny similarities, i.e., the same layout or typographical errors. Bids from the same IP address raise suspicion, but by itself may not be a strong indicator of a cartel. In such cases, other factors mentioned in this para should be assessed to judge cartelisation.
3. If this rate is unreasonably high, this may be an attempt to force acceptance of higher rates by undermining the negotiating power of the buyer as per rules. Even when rates are reasonable, this may be an attempt to force the Port to distribute quantities as decided by the bidders among them, even in tenders where splitting of quantities is not envisaged.
4. Cartels, by their very nature are secretive and thus it may not be possible to find the direct concrete evidence of their presence. The orders of the Competition Commission of India (CCI) clearly mention reliance on circumstantial evidence, both economic and conduct based, to conclude the existence of a cartel agreement.
5. Such cartel formation/ pool rates abuse the transparency of Public Procurement and are a violation of the code of Integrity for Public Procurement. Such and similar tactics (please refer to para 7.8-7) by bidders to avoid/ control true

competition in a tender leading to an "Appreciable Adverse Effect on Competition" (AAEC) is an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Please refer to para 6.0 of Appendix-GM-S2/A2.

6. Such abnormal practices need to be severely discouraged with strong measures. To discourage such practices, the Port may include in all tender documents a Cartel Formation/ Pool Rates clause, stating inter-alia that the Port reserves its rights to take the following actions, without assigning any reasons thereof, in case a Cartel/ Anti-competitive practice is suspected in a tender:

a) Specify in the Tender Document for requirements that are prone to such practices that bidders must bid for at least a quantity that is more than a minimum specified percentage (say 25%) of the tendered quantity; otherwise, their offer shall be rejected.

b) Warn that Port may take any/ all punitive actions available under the Code of Integrity for Public Procurement against such bidders, including removal from the list/ panel of registered sources or debarment, besides reporting the transgression to Competition Commission, and concerned trade associations like FICCI, ASSOCHAM, NSIC for suitable punitive action.

c) Please note the following in para 7.6.9 below:

> *In no case, including where cartel rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates.*

d) The Port may decide the tender as per one or more of the following provisions:

i) Reject all bids from the suspected cartel formation and decide the tender accordingly.

ii) Place an order on any one or more firms from among the cartel for any quantity with the exclusion of the rest, with or without negotiation or counteroffering.

Note: The selection of firms for this may be based on a transparent logistics parameter, i.e., quicker delivery, nearer location of source, relatively better past performance, etc.

iii) Whenever tender is floated for purchase exclusively from approved vendor list, and cartel formation is suspected among all such sources; the Port may place orders on bidders who are not in the approved vendor list for any quantity.

iv) Wherever a specified ratio for splitting of quantities among 2/ 3 sources is stipulated in the tender document, and cartel formation is suspected among lower 2/3 bidders, place orders on any number of bids beyond such ratios or decide tender as per sub-para-i) or ii) above.

7.6.9 Negotiations for Reduction of Prices (Rule 173 (xiv) of GFR 2017)

1. Negotiation with bidders for price reduction after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation is necessary due to some unavoidable circumstances, it should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate.

2. In no case, including where cartel rates are suspected, should negotiations be extended to those who had either not tendered originally or whose bid was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates.

3. Price negotiations may not be considered except under the following exceptional circumstances:

   a) Where L1 price is not considered to be reasonable, and

      i) the procurement is done on a nomination basis or
      ii) Procurement is from single or limited sources or

      iii) In situations 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 a bare minimum quantum of immediate requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tender process.

   b) Where there is suspicion of cartel formation, which should be recorded, following provisions of para 7.6.8 above.

4. 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 Competent Authority should exercise due diligence while accepting a tender, ordering negotiations, or calling for a re-tender, and a definite timeframe should be indicated.

5. Normally, all counter-offers are considered negotiations by other means, and the principles of negotiations should apply to such counter-offers. For example, a

counter-offer to L1 to arrive at an acceptable rate shall amount to a negotiation. However, any counter-offer (at the rates accepted by L1) to L2, L3, and so on in case of splitting of quantities (and in parallel Rate Contracts) shall not be deemed to be a negotiation. Similarly, dynamic bids in the Reverse Auction process, as per para 4.5 above, are not to be considered as negotiations.

6. After the Competent Authority has decided to call a specific bidder for negotiation, the following procedure should be adopted:

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

   b) The bidder to be called in for negotiations should be addressed as per the format of the letter laid down in Annexure 15 so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;

   c) A negotiation meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 15.

   d) Revised bids should be obtained in writing from the selected bidders at the end of the negotiations in the format of the letter laid down in Annexure 16. The bidder should not be permitted to change any other condition of his bid other than lowering the price. The revised bids so obtained should be read out to the bidders or their representatives present immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be considered. In case a bidder does not submit the revised bid, decision shall be taken based on its original bid.

7.6.10. Consideration of Lack of Competition

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

1. The number of bids received, which can indicate adequate competition, depends on the parameters of procurement (value, specification, mode of procurement, tendering system, etc.) and the market situation. This has to be judged by the Tender Committee. However, less than three independent bids (without suspicion of the cartel) may indicate a lack of competition. TC must record a paragraph in its report about the adequacy or otherwise of competition in the tender.

2. Sometimes, against advertised/limited tender cases, the Port may not receive enough bids and/or, after analysing the bids, ends up with only one responsive

bid – a situation referred to as 'Single Offer.' As per Rule 21 of DFPR (please see Annexure 2 explanation sub-para), such a situation of 'Single Offer' is to be treated as a Single Tender. It has become a practice among some procuring entities to routinely assume that open tenders that result in single bids are not acceptable and to go for re-tender as a 'safe' course of action. This is not correct. Re-tendering has costs: firstly, the actual costs of retendering; secondly, the costs of delay in the attainment of the purpose for which the procurement is being done; and thirdly, the possibility that the re-bid may result in a higher bid (As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021). Even when only one Bid is submitted, the process may be considered valid, provided the following conditions are satisfied:

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

b) The qualification criteria were not unduly restrictive,

c) Prices are reasonable in comparison to market rates.

3. However, as far as delegation/schedule of procurement powers (SoPP, refer to Annexure 4) is concerned, the competent authority would be as in Single tender mode. In case the price is not reasonable, negotiations (being L1) or retender may be considered if justified.
4. Unsolicited offers against LTEs should be ignored. However, Port should develop a system by which such interested firms can register and bid in the next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
   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.

7.6.11. Cancellation of Procurement Process

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

1. The Port has the right to cancel the process of procurement or reject all bids at any time before intimating acceptance of a successful bid under the circumstances mentioned below. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation from the Specifications or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to reinvite the bids, the Specifications should be critically reviewed/modified so as to address the

reasons for not receiving any acceptable bid in the earlier Invitation for bids. The Port may cancel the process of procurement or reject all bids under the circumstances mentioned below:

a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the tender process

b) when none of the bids 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 based on the number of Bidders. (Please refer to the paragraph above 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, fails to sign the procurement contract, or fails to provide the performance security as may be required (Para 7.7.3) or otherwise withdraws from the procurement process (para 5.2.5), the Port shall re-tender the case (Notified vide OM No. F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022).

2. In cases where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described above. If it is decided to reinvite the tender, the justification should balance the perceived risks in the finalisation of the tender (marginally higher rates) against the certainty of resultant delays, cost escalations, and loss of transparency in the re-invited tender. It may be noted that once a Tender is retendered, the bids in the old tender cannot be revived and reconsidered, as per the Indian Contract Act, even if prices received in the new tender turn out to be higher.

3. The Competent Authority should accord approval for re-tendering based on the reasons/proper justification in writing. The decision of the Port to cancel the procurement shall be immediately communicated to all bidders that participated in the procurement process, and bids, if not opened, would not be opened and, in case of off-line tenders, be returned unopened. EMD, cost of Tender Document (if any) etc should be promptly returned.

4. Before retendering, the Port is first to check whether, while floating/issuing the enquiry, all requirements, and formalities such as standard conditions, industry-friendly qualification criteria, technical and commercial terms, wide publicity, sufficient time for tendering, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

7.6.12 Handling Dissent among Tender Committee

1. Tender Committee duties are to be discharged personally by the nominated officers. They may get the help of their subordinate officers by way of reports/ evaluations, but they would still be personally answerable to 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 the circulation of notes.
2. 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 based on the majority view. However, such situations should be rare. The Competent Authority can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.
3. In cases where the Competent Authority does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, first send it back to the TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the Competent Authority, sticks to its own earlier recommendations, the Competent Authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

7.6.13 'No Conflict of Interest'

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

1. Members of the TC should not have any conflict of interest and should not directly engage in any communication with bidders from the date of their appointment to the date on which the contract is awarded.
2. Information relating to the evaluation of bids and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process until the award of the contract is notified to the successful firm, except that after technical evaluation, the list of successful bidders may be published, as required in the Tender document. Under no circumstances should the tender file or confidential information contained therein be provided for scrutiny or for decision to any person/ office who is not involved in decision-making.
3. All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be

part of the 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 (Please refer to para 3.5-5 for clarification) with any of the bidders in this tender." TC members may also make such a declaration at the end of their reports.

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

7.6.14 Tender Committee Recommendations/Report

1. The TC must make formal recommendations (Annexure 14) 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 for TC to spell out salient terms and conditions of the offer(s) recommended for acceptance. The TC should also ensure that any deviation/variation quoted by the supplier in his bid is not left undiscussed and ruled upon in the recommendations; otherwise, the supplier may delay acceptance of the contract. 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 Competent Authority to consult the Head of Finance Department before accepting the TC recommendations. In any purchase decision, the responsibility of the Competent Authority is not discharged merely by selecting the cheapest offer or accepting TC recommendations but by ensuring whether:

    a) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;

    b) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;

    c) The price of the offer is reasonable and consistent with the quality required,

d) The accepted offer is the most appropriate, taking all relevant factors into account and keeping with the standards of financial propriety.

2. After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued. (Rule 189 of GFR 2017)

Chapter-7-A

Award of Contract

7.7. Award of Contract

7.7.1 LoA to Successful Bidder

1. Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and foolproof method that his bid has been accepted. Legal communication of acceptance of the 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 17. In the same communication, the successful bidder is to be instructed to furnish the required performance security within a specified period (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount). Letter of Award - LoA shall state the sum (hereinafter and in the contract called the "Contract Price") that the Port shall pay the contractor in consideration of the supply of the Goods. The Letter of Award (LoA) shall constitute the legal formation of the contract if it is not conditional on submission of Performance Security (as in tenders below Rs 50 Lakhs). In case Performance Security is stipulated it would amount to a contract only after the furnishing of performance security as per the provisions of the para 7.7.3 below. The Port, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.

2. Before issuing a Letter of Award (LoA) to the successful Bidder(s), the Port may, at its discretion, ask the Bidder to submit for verification the originals of all such documents whose scanned copies were submitted online along with the Technical bid. If so decided, the photocopies of such self-certified documents shall be verified and signed by the competent officer and kept in the records as part of the contract agreement. If the Bidder fails to provide such originals or, in case of substantive discrepancies in such documents, it shall be construed as a violation of the Code of Integrity. Such a bid shall be liable to be rejected as unresponsive bid in addition to other punitive actions in the Tender Document. The evaluation of responsive Bids shall proceed with the subsequent ranked offers.

3. The value of the Contract should include Taxes/ duties/ levies, if any.

4. In some cases, the successful bidder (an OEM or an agent representing a principal firm) requests that the Contract be placed on their subsidiary or an authorised dealer. This is legally not acceptable as the Contract can only be

placed on the bidder in whose name the bid has been submitted, not on any third party.

5. It shall be mandatory for the successful bidder to register on GeM and obtain a unique GeM Seller ID before the placement of LoA or the contract. This ID shall be incorporated into the contract.

7.7.2 Publication of Award of Contract and Return of EMD of Unsuccessful Bidders [Rule 173 (xviii) of GFR 2017]

1. **Mandatory Publication of Award of Contract:** The details of the award of the contract and the name of the successful bidder should be mentioned mandatorily on the CPPP/ GeM (as relevant) and in the notice board/bulletin/website of the Port.

2. **Exceptions to Publishing of Award of Contract:** 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 Board with the concurrence of Finance. Open, transparent declaration of price, sources, and delivery schedule of Central Public Sector Enterprises (CPSEs) suppliers as per extant instructions adversely impacts the ability of CPSEs to compete in the highly competitive market. CPSEs are denied a level playing field. At the time of tender formulation, commercial organisations like CPSEs will disclose whether the subject of procurement is for commercial resale. Contract Award details of such cases may be shared on electronic Procurement Portals such as GeM, Central Public Procurement Portal (CPPP), etc., after six (06) months of finalization of procurement. Such a system shall protect the financial data of the CPSEs for a reasonable time while also complying with the requirement of transparency.

3. **Bid Securities:** Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified, and their bid security shall be returned without interest within 30 (thirty) days of notice of award of contract in terms of para 6.1.1 above. The successful supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

7.7.3 Performance Security

The supplier receiving the LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form within the period prescribed in the tender document (generally 14 (fourteen) to 28 (twenty-eight), depending on the amount), as per para 6.1.2 above. In case performance security is not submitted within the stipulated time, the Port may pursue the contractor up to a reasonable grace period for submission. In case the firm fails to submit the requisite Performance Security even

thereafter or fails to sign the contract, it may be treated as a withdrawal of an offer by the L1 bidder, and the tender may be reinvited (refer para 7.6.2-3), besides taking necessary punitive actions including forfeiture of EMD, deregistration and debarment against such bidders.

7.7.4 Acknowledgement of Contract by Successful Bidder and Execution

1. After the successful bidder is notified that his bid has been accepted, the supplier/contractor should acknowledge and unconditionally accept the Purchase order and enter into an agreement (if required) 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.
2. Such acknowledgements may not be required in low-value contracts below Rupees One Lakh. 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 investigated for necessary action, and thereafter, the supplier's unconditional acceptance of the contract must be obtained. If both parties (Port 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 bidder that in case he does not furnish the required performance security or does not sign the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for punitive actions against it, as mentioned in para 7.6.2-3 above. The Port may also consider getting the contract digitally signed.
3. 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 Board. The words "for and on behalf of the Kamarajar Port Limited" 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 different authorities may execute, are specified in the DFPR. No contract on behalf of Port should be entered into by any authority which has not been empowered to do so under the orders of the Board.

7.7.5 Framing of Contract

(Rule 225, GFR 2017)

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

1. Any agreement shall be issued strictly as per approved TC recommendations as vetted by the Associated/Integrated Finance, and approved by Competent Authority. The terms of the 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 Finance.

2. All contracts shall contain a provision for

   a) Recovery of liquidated damages (LD) for the 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;

   c) reserve the right of the Government to reject goods that do not conform to the specifications for the supply of goods should;

   d) Payment of all applicable taxes by the contractor or supplier;

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

3. Standard forms of contracts should be invariably adopted, except in the 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) With respect to contracts for purchases valued from Rupees One Lakh to up to Rupees Ten lakhs, where tender documents include the GCC, SCC, and schedule of requirements, the letter of acceptance will result in a binding contract, *provided no performance security is called for or due to be submitted*. All delivery liabilities would be counted from the date of LoA. (Rule 225 iv)b) GFR 2017).

   c) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of Competent Authority is to be obtained,

   d) Copies of all contracts and agreements for purchases of the value of Rs. 50 (Rupees Fifty) lakh and above and all rates and running contracts entered into by all departments of the Port should be sent to the CVO of the Port.

7.7.6 Audit Trails - Procurement Records

1. As mentioned in para 1.8.5 above, the Port must maintain and retain audit trails, records and documents generated or received during its procurement proceedings in chronological order. The files should be stored in an identified place and retrievable for scrutiny whenever needed without wasting time.

2. However, many organisations now process procurements on their own or eProcurement Portals. In such cases, taking printouts and making a physical file just for records may be counter-productive, provided the portals have provisions for audit trails. The documents and records to be maintained electronically or physically will include the following:

   a) documents pertaining to the determination of the need for procurement;

   b) description of the subject matter of the procurement;

   c) Statement of the justification for the choice of a mode of procurement other than open competitive tendering;

   d) Documents relating to pre-qualification and registration of bidders, if applicable;

   e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;

   f) Requests for clarifications and any reply thereof, including the clarifications given during pre-bid conferences;

   g) Bids evaluated and documents relating to their evaluation;

   h) Contracts and Contract Amendments

   i) Complaint handling, correspondence with clients, consultants, and banks.

3. In case physical files are still maintained, the Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Tender Document and documents relating to its formulation, publishing and issue/ uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and 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 the integrity of the records relating to Procurement, these files should be kept secure, and for contract management, a new volume of files may be opened to obviate frequent exposure of sensitive procurement files. In contract management volume, copies of successful bids, Tender Committee Reports, and Contract may also be kept for ready reference,

besides correspondence and documents relating to Contract Management and its closure.

7.8. Evaluation of Bids and Award of Contract - Risks and Mitigations

Risk-1

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

Mitigation-1

TC should give an undertaking at the appropriate time (as per para 7.6.13-3) that none of the members has any COI with the companies/agencies participating in the tender process. Any member having a COI with any company should refrain from participating in the TC. Some members of a TC may be subordinate to or related to 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.

Risk-2

Discriminating against a Best Value Bid: In case a bidder's bid (not in the good books of the Port) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes the best value bid:

Mitigation-2

Mitigation for each type of risk is mentioned below.

Risk-3

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

Mitigation-3

Please refer to para 7.6.11 regarding safeguards against this. In case a procurement is rebid more than once, approval of one level above the Competent Authority may be taken. Please also see the complaint mechanism.

Risk-4

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

Mitigation-4

Bid conditions must specify a limit beyond which the originally announced quantity/scope cannot be reduced/increased. If parallel contracts are envisaged, clear criteria for the splitting may be specified in the tender documents beforehand. (Refer to para. Please refer to para 7.6.3.

Risk-5

Unwarranted negotiations: negotiations are called without justification. Sometimes, a counteroffer is made to discourage the lowest acceptable bidder.

Mitigation-5

Normally, there should be no post-tender negotiations. In certain exceptional situations, for example, procurement of proprietary items, items with limited sources of supply, and items where there is suspicion of a cartel formation, negotiations may be held with L-1. In case of L-1 backing out, there should be retendering. Please refer to para 7.6.9.

Risk-6

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

Mitigation-6

A target timeline for the finalisation of procurement should be laid down. Delays and reasons thereof should be brought out before the CA on the file at the time of TC's acceptance or contract signing. Please refer to para 7.6.1.

The contract should be strictly as per the bid conditions and accepted offer. Please refer to para 7.7.5-1.

Risk-7

Anti-competitive practices: Bidders, which would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a tender process. Anti-competitive conspiracies can take many forms. Sometimes, the officers involved in procurement may be part of such collusion.

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

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

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

Bid rotation: In bid-rotation schemes, conspiring firms continue to bid, but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.

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

Mitigation-7

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

Chapter-8

Procurements with Unique Features

8.1. Handling Procurement in Emergencies and Disaster Management

8.1.1 Procurements in Emergencies/ Urgencies

1. There are sufficient fast-track procurement modes and flexibilities in the Procurement guidelines to tackle procurements in operational emergencies/ urgencies. Enhanced delegations of procurement powers may be incorporated in SoPP to handle such situations. The following modes of procurements may be utilised in order of speed:
    a) Procurement through the GeM portal
    b) Direct Procurement Without Quotation
    c) Direct Procurement by Purchase Committee
    d) SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids

8.1.2 Procurement in Crisis Situations - Disaster Management/ Pandemic

Normal procurement modes, thresholds and bid systems are not tailored for procurement in crises like Disaster management/ Pandemic. Hence, during such a situation, the following dispensations may be allowed with the approval of competent authorities:

1. An order may be issued by the competent authority, declaring the crisis, and promulgating the start of procurements procedures under the crisis, with an estimated validity period till which these would apply.
2. **Need Assessment**: The most crucial task is to consolidate and aggregate the requirements from all jurisdictions. Specifications should be rationalised considering the market situation. A centralised list may be prepared containing the quantities (unit-wise) and specifications of each item. Such lists may be preserved for future use.
3. If a Crisis is likely to extend over a prolonged period or if such disasters are endemic to the region (floods/ cyclones), rate contracts may be entered into to cater to such situations.
4. This is not the time for complex methods, e.g., reverse auction, etc. The use of the following modes of procurements is suggested in order of speed. 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:

a) Procurement through the GeM portal, which responds to such situations as COVID19.

b) Direct Procurement Without Quotation

c) Direct Procurement by Purchase Committee

d) SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids

e) Other than these, unlisted but fast modes of procurement, e.g., enhancement of quantity or repeat orders at the same terms in existing contracts, may be pursued. All contracts may be placed with clauses for quantity enhancements and repeat orders.

f) All procurement may be done using single-stage, single-envelope tendering systems.

g) Even if pre-qualification is felt necessary, self-declaration in a single envelope may be called for instead of a time-consuming pre-qualification bid.

h) Pre-bid conferences may be replaced by informal market research.

5. Enhanced delegations of procurement powers in SoPP may be considered, with the approval of the MD/Chairman, to handle such situations.

6. Deliveries that suit the urgent/ emergent and disaster management situation may only be allowed.

7. The reasonableness of prices in such situations may be judged by keeping in mind that prices in such situations may be higher than in normal procurement to cater to express deliveries/ disruptions, etc.

8. Model Tender Documents or General Conditions of Contract should not apply to emergency procurements.

9. Minimum timelines for bid submission may be shortened (say 1-3 days). Bids by phone, email, and in-person may also be considered.

10. Norms of minimum bids in a tender may be relaxed, and even a single offer may be accepted without retendering. No tender should normally be allowed to be discharged or re-invited.

11. In emergency procurements, time-consuming norms for Tender Document costs, Earnest Money Deposit (EMD), Security Deposit (SD or performance guarantee), vendor registration fee, verification of eligibility/ qualification (by putting the onus on the vendors to self-declare his eligibility, qualifications, and capability, with

penalties for false declarations), Liquidated Damages (LD) or other penalties, Negotiations, etc., may be dispensed with or relaxed. Delegation in this regard may be enhanced and delegated to cutting-edge levels.

12. Documents required for various stages – bids, qualification, eligibility, inspection, and payment must be barely minimum.

13. Instead of physical inspections, vendors' self-declaration of quality may be accepted.

14. Putting GeM at the centre of all such emergency procurement would help in transparency and price monitoring. However, in urgent/ emergent and Disaster Management situations, in case of procurement below Rs. 50,000, if deliveries are not suitable on GeM, procurement may be done locally as per sub-para 4) above, even if the items are available on GeM, as an exception to the rule. Prior or post facto sanction may be taken from the Secretary of the Department.

15. Ensuring Transparency, Integrity, and Accountability:

    a) As far as feasible, procurement may be done on the GeM portal.

    b) All procuring agencies should constitute a separate team (without hampering people involved in procurement) to keep a record of justification and quantum of emergency procurements for future accountability.

    c) After the crisis is over

        i) The Competent Authority may issue an order signalling the end of the crisis and the emergency procurement procedures.

        ii) Special time-bound internal and external audits of all emergency procurements should be done with a large sampling size when normalcy returns. If need be, public or private agencies may be hired to assist with this large volume of audits.

        iii) Any undelivered contract, if any, may be reviewed for cancellation.

        iv) Unutilised stocks, if any, may be reviewed for gainful use.

16. **Getting Ready for Future Disasters:** Such emergency procurement systems and lists may be formalised for future disasters. e.g., the enhanced delegations may be integrated into the normal SoPP as delegations in defined crisis.

8.2. 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 tender 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 tender document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with a rebate for the old item and also without any rebate (in case they do not want to lift the old item). This will provide an option for the department to either trade or not trade the old item while purchasing the new one. (Rule 176 of GFR 2017)

8.3. Capital Goods/ Equipment

Capital goods are machinery and plants (M&P), which create new fixed assets/ utility/ functionality or benefits for the organisation and have a long and useful life. This also refers to IT procurements of IT Systems (comprising one or more Hardware, Networking, tailor-made and customized Software, Installation/ Commissioning, Training, AMC/ CMC, Cloud Services, and other services). Distinctive features of procurement of Capital Goods are:

1. 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 for in the Capital Block of the Organization. However, these features may not apply to Capital goods of smaller values;
2. There are also alternatives to outright purchasing/ owning such equipment, like hiring/ hire purchase/ leasing or acquiring the functionality as a service. For example, instead of buying a staff car, a monthly service/ hiring contract can be entered into to provide vehicles as per requirements. The car can also be wet leased (including maintenance), and a service contract for drivers/ cleaners can be entered into separately. This can be especially advantageous in equipment that undergo obsolescence quickly – e.g., IT equipment.
3. 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 that 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 the restoration of defects. Clauses for including essential initial spares for two years' maintenance to be supplied along with equipment may be provided. If necessary, an 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;

4. 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, Total Cost of Ownership (TCO) becomes an important consideration – which can be addressed in Public Procurement by way of appropriate Description, specification, and Contract conditions like the inclusion of the cost of supply of initial essential spares and Net Present Value (as per NPV technique, refer para 8.5 below) of Annual Maintenance Contracts (AMC) for a specified number of years within the estimated cost and also the evaluation criteria of procurement contract;

5. In case the Plant and Equipment (or an IT System) consists of several machines/ components/ systems that work in tandem or if it includes services/ works to be done by a third party, an all-encompassing Turnkey contract may be a better alternative,

6. Because of the complexity of specification evaluation, the technical suitability of offers in the 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 the detailed justification for the deviations from each clause of specification, should be requested from the bidder in the tender 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, a Pre-bid conference may help in reducing disputes and complexity at the time of evaluation;

7. Experience, capacity, and financial strength of a supplier are important determinants of quality and after-sales support for capital goods; such procurements are a fit for prequalification bidding.

8.4. Annual Maintenance Contract (AMC)

(Rule 169, GFR 2017)

1. 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 the 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.

2. The maintenance contract may be entered into either with the OEM 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 a case-to-case basis on merit.

3. If the maintenance contract is to be made a part of the procurement of equipment (refer to para 8.3 above), then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself. While evaluating the offers, the cost component towards the maintenance of the goods for the specified number of years is also to be added to the evaluated tender value on an overall basis to decide the inter se ranking of the responsive bidders. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost (all-inclusive, based on total outgo from the pocket) 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 bidders 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 to the Net Present Value (NPV, please refer to para 8.5 below) as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.

4. 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 are evaluated and ranked accordingly for placement of the maintenance contract.

   Here, the OEM supplier of the goods may also quote, and his quotation, if received, is to be considered along with other quotations received. In some situations, OEM manufacturers/suppliers of goods authorise certain service providers to provide AMC support. In such cases, the Service provider must produce such authorisation/ letter from the OEM, confirming technical and spares support to the service provider.

5. The details of the services required for the 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.

6. 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, a channel for registering service requests, response time for resolving the request, Channel for escalation of a service request in case of delay or the unsatisfactory resolution of the request, monitoring of Service Levels etc. This would include the provision of helplines, 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 the performance output of machines, including provisions for terminations.

7. It should be indicated in the tender 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 the costs of spares are to be borne by the Port, 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.

8. A suitable provision should be incorporated in the tender enquiry document and 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.

9. 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, the period of maintenance, and so on.

10. 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.

11. 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 Port 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)

8.5. Net Present Value (NPV)

1. Net Present Value (NPV) or Net Present Worth (NPW) of equipment procurement is the sum of the present values of the net cash flows for all the years of the equipment's economic life. The net cash flows are discounted to arrive at the NPV of equipment by applying a predetermined discount rate as per the formula below:

$$NPV = CF_o + \frac{CF_1}{(1+r)^1} + \frac{CF_2}{(1+r)^2} + \frac{CF_3}{(1+r)^3} + \cdots \cdots \frac{CF_n}{(1+r)^n}$$

2. The discount rate is r (in fraction), CF^0 is the quoted price, CF^1, CF^2, CF^3, and CF^n are the costs in 1st, 2nd, 3rd, and so on nth years. One possible rate to be used is the interest rate of the General Provident Fund (GPF).
3. The terminal disposal value of the equipment is also to be taken as negative expenditure, but since these are most likely to be the same for all bidders and there is uncertainty in estimating this, it is usually not included in calculating NPV in procurement decisions.
4. The above formula for NPV need not be manually calculated; it can be calculated using the NPV function in Excel.
5. This is shown by a solved example below:
   a) The discounting rate is taken as 7%. There are three offers against a tender for vehicles at different quoted costs. Offer 1 (lowest quoted price) incurs the highest operating cost, offer 2 (higher quoted price) incurs a somewhat lesser operating cost, and offer 3 (highest quoted price) incurs the least operating cost. The free warranty is for 2 years, and the firms have quoted 5 years' AMC after that at the annual fee mentioned below. In this evaluation, NPV expenditures up to the AMC duration (2-year warranty and 5 years' AMC) were made. It may be seen that offer 3, with the highest quoted price, has the lowest NPV due to low operating costs despite a higher AMC Fee. This offer may, therefore, be considered an L1 offer.

	A	B	C	D
1	Expenses	**Offer 1**	**Offer 2**	**Offer 3**
2	The initial investment, including costs of initial spares, installation/ commissioning, Training, etc	₹ 4,00,000	₹ 5;00,000	₹ 6,00,000

3	Annual expenditure on operation (fuel, consumables)	₹ 1,50,000	₹ 1,00,000	₹ 50,000
4	Free Warranty 1st Year	₹ 0	₹ 0	₹ 0
5	Free Warranty 2nd Year	₹ 0	₹ 0	₹ 0
6	AMC in 3rd Year	₹ 40,000	₹ 50,000	₹ 60,000
7	AMC in 4th Year	₹ 40,000	₹ 50,000	₹ 60,000
8	AMC in 5th Year	₹ 40,000	₹ 50,000	₹ 60,000
9	AMC in 6th Year	₹ 40,000	₹ 50,000	₹ 60,000
10	AMC in 7th Year	₹ 40,000	₹ 50,000	₹ 60,000
11	NPV	₹ 13,51,644.26	₹ 12,17,992.50	₹ 10,84,340.74

b) The formula in Excel for calculating NPV for column B (mutatis mutandis for C and D) is:

NPV = (0.07, (B3+B4), (B3+B5), (B3+B6), (B3+B7), (B3+B8), (B3+B9), (B3+B10)) +B2

8.6. Turnkey Contract

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

8.7. Procurement of Books and Print Media

1. The procurement of print media encompasses various categories such as books, journals, magazines, and newspapers, each serving distinct purposes like knowledge dissemination and education. While books are often acquired for libraries or educational curricula, newspapers, magazines, etc., have a wider

applicability. Decisions regarding the procurement of print media involve careful consideration of factors such as author, publisher, subject matter, content quality, edition, and market availability. Once the category and specifications are determined, quotations may be solicited from vendors in the form of Net Discount over the (published) Price. The vendor offering the most competitive discount, referred to as L1, is typically chosen.

2. Additionally, the onboarding of the vendor should be for at least 1 year to ensure stability and continuity in the procurement process. Rate Contracts can be utilized for these procurements, providing a framework for consistent pricing and terms over the specified duration. This process ensures that the Port obtains the desired print media at the best possible price, balancing considerations of quality, content, and vendor stability.

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 Contractors adhere to contract terms and deliver the desired outcomes as per the terms and conditions of the contract (such as timely deliveries, quality of goods supplied, adherence to the proper procedure for submitting invoices, and so on), and any problems are identified and resolved in a timely manner. It also ensures that the payments made to the contractor match the performance. Without sound Contract management, 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:

a) Scope of Supply and Quantity Control

b) Time Control – Monitoring Delays

c) Quality Assurance and Inspections

d) Cost Control - Prices, Taxes and Payments;

e) Logistics: Transportation, Receiving, Storage and Issue of Goods

f) Contract Administration:

   i) Performance Security
   ii) Amendments to the contract;
   iii) Safeguards for handing over Port materials/equipment to contractors;
   iv) Monitoring Supplier Performance
   v) Monitoring Supplier Obligations
   vi) Contract closure;

g) Breach of Contract, Remedies and Termination;

h) Dispute resolution;

9.2. Scope of Supply and Quantity Control

9.2.1 Quantity Tolerance - Minor Short/ Excess Deliveries

Minor shortfall/ excess deliveries in the last/ final consignment are unavoidable due to the manufacturing and supply chain vagaries. Although to close the contract, an amendment may require to be issued, yet to simplify the process, the consignee receiving the material can be authorised to treat the Contract as completed, provided the deliveries are short/ excess up to 5 per cent of the total value of the Contract or

Rs. 5 Lakhs, whichever is less. Payment will be made without the issue of formal contract amendment and reference to the ultimate user/ indentor. Only the supplied quantity shall be paid for as per the terms of the contract. This shall not be applicable to indivisible items or machinery and plant.

9.2.2 Option Clause

1. 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 Tender Document and the contract and ideally should not exceed 25-30% (Please refer to para 7.6.4 above). Approval should be obtained from the Competent Authority (who originally approved the tender decision) to exercise the option clause based on the value of the contract and the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original Competent Authority, approval of the Competent Authority for the enhanced value may be taken.

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

   a) If the quantity has been increased under the option clause, the negative option clause should not be invoked thereafter, or vice a versa.

   b) In case of a 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;

   c) There should be no declining trend in the price of the stores as evidenced by 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;

   d) If the option clause exists during the provisioning of the next cycle and tender evaluation in the next cycle of procurement shows an increasing price trend, the application of the option clause must be positively considered. The contract management authority must also keep an eye on delivery against the contract. If other conditions are satisfied, the option clause must be exercised;

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

f) The option clause shall be exercised during the currency of the contract so that the contractor has reasonable time/notice for executing such an increase. It can be exercised even if the quantity of the original ordered order 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;

g) This provision can also be exercised in case of PAC/single supplier OEM cases.

h) 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.

9.3. Time Control – Monitoring Delays

9.3.1 Delivery Period

1. 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.

2. In the case of items such as raw material, in which consignments are delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply within +/- 10 (ten) per cent in any calendar month or +/- seven per cent cumulative in any calendar quarter, or +/- five per cent cumulative in any calendar year would not be considered as a violation of delivery schedule and would not attract LD. Any excess quantity supplied even beyond such variations shall also not attract LD but may be rejected as a violation of the delivery schedule if the Port finds it inconvenient to store/ use.

3. Unless otherwise agreed, the Port is not bound to accept goods instalments or part deliveries.

9.3.2 Terms of Delivery

Terms of delivery (FOR, FOB, CIF, CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the Port is to receive/collect the goods. It also decides the legally critical issue of when the 'titles of the goods' have passed to the Port. The delivery period is to be read in conjunction with the terms of delivery. Therefore, the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms. Chapter 6 has more details in this regard.

9.3.3 Delays in Delivery

1. **Delay in Delivery:** Suppliers shall be required to adhere to the delivery schedule (including any instalment thereof or incidental Work/ Services, e.g., installation, commissioning, operator training, etc.) specified in the purchase order (or as extended) and, if there is a delay in supplies, it amounts to breach of contract, since 'Time is the Essence of the Contract'. The Port may, without prejudice to his other rights:
   a) Recover from the contractor liquidated damages as per para 9.3.9 below or
   b) treat the delay as a breach of contract as per para 9.8.2 below and avail all the remedies therein, although it is in the Port's interest to resort to this provision only as a last resort in case of inordinate delays.
2. **Inordinate Delays:** Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays. Such inordinate delays may be treated as a breach of contract and shall be noted as deficient performance and held against the contractor in future tenders. A show-cause notice shall be issued to the contractor before declaring it a deficient performance. In case Port decides to allow performance of contract, after inordinate delays, maximum limit on LD shall be 10% (instead of 5%) of the total contract value, as per para 9.3.9-1 below.
3. **Delay in Supplies for which Supplier is not Responsible**:
   a) In cases where there is a delay for which the supplier is not responsible, the delivery period needs to be re-fixed without imposing any penalty on the supplier (i.e., without LD and without a denial clause). Normally, in the following circumstances, the supplier may not be considered to be responsible for the delay:
      i) Cases where the supplier is dependent on the approval of the pre-production sample, and the delay occurs in approving the sample though submitted by the supplier in time;
      ii) Where extension in the delivery period is granted on account of some omission on the part of the Port, which affects the due performance of the contract by the supplier,

iii) Cases where the Port controls the entire production schedule of supplier.

iv) Cases where the production and/or delivery has been affected by Force Majeure or statutory change or specific executive instructions issued by Govt.

c) There may be delays for which both buyer and supplier may be responsible to a different extent. In such cases, the levy of LD and Denial clause may be decided on merits.

9.3.4 Extension of Delivery

1. If, at any time during the currency of the contract, the supplier encounters conditions hindering the timely delivery of goods, he shall promptly inform the concerned officer of the Port in writing. He should mention its likely duration and request an extension of the delivery schedule accordingly. On receiving the supplier's communication, the Port shall examine the proposal (refer to Annexure 21) and, on approval from the Competent Authority, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.3.7 below), for completion of the contractor's contractual obligations, provided:

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

   b) In the case of fixed price contracts, there is no falling trend in prices for this item, as evidenced by the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices since the price variation mechanism protects the Port's interests. However, in such cases, it should be ensured that extensions are done with the denial clause.

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

3. No correspondence should be entered into with the supplier after the expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain

information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive, that it does not waive the breach and that it is without prejudice to the rights and remedies available to the Port under the terms of the contract. The last line of such a communication should, therefore, be: "This letter is issued without any prejudice to Port's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation." A format for such correspondence is given in Annexure 23.

4. When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the Port under the terms and conditions of the contract" as this would mean that all the options given in the conditions of the contract would be available to the Port on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of the complex legalities brought out above, an extension of the delivery period, when granted, should only be done in writing in the format given in Annexure 22.

5. Port may put in place a graded authority structure whereby an extension of time for completion of a contract beyond a specified threshold value of the contract may be granted by the next higher authority.

9.3.5 Performance Notice

A situation may arise where the supply/services have not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for an extension of the delivery period, but the Port still requires the contracted goods/services, and the Port does not want to terminate the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, along identical lines as in para 9.3.4 above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to Annexure 22.

9.3.6 Force Majeure Clause (FM)

1. A Force Majeure (FM) means extraordinary events or circumstances beyond human control, such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events

specifically excluded in the clause). An FM clause in the contract frees both parties from contractual liability and obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not entirely excuse a party's non-performance but only suspends it for the duration of the FM. The firm must give notice of FM within a reasonable time as the conditions permit (say, not later than 14 days after its occurrence), and it cannot be claimed ex-post facto. There may be an FM situation affecting the Port only. In such a situation, the Port has to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may, at its option, seek to terminate the contract without any financial repercussion on either side.

2. Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

9.3.7 Denial Clause (DC)

The Port should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above the levy of LD) in the letter informing the supplier of the extension of the delivery period. In the denial clause, wherever delay in delivery is due to a default by the seller, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the Port reserves his right to get any benefit of a downward revisions in statutory duties, PVC, and foreign exchange rate during such period. Thus, PVC, other variations, and foreign exchange clauses, in such cases, operate only during the original delivery period. The format of the denial clause is available in Annexure 22.

9.3.8 Liquidated Damages (LD)

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as Liquidated Damages (LD). The law allows recovery of pre-estimated loss provided such a term is included in the contract, and there is no need to establish actual loss due to late supply. However, it would strengthen the Port's rights if it were established and kept on record that inconvenience and loss have been caused due to the delay in supplies, though the loss cannot be exactly quantified, and hence liquidated damages are applicable as a genuine pre-estimate of the loss.

9.3.9 Quantum of LD

1. While granting an extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after the expiry of the original delivery period, the Competent Authority may recover from the contractor, as agreed, as LD a sum equivalent to 0.5 (half) per cent of the delivered price (including elements of GST, freight and variations as per sub-para 2) below) of the delayed Goods and/ or incidental Works/ Services for each week of delay or part thereof until actual delivery or performance, subject to a maximum deduction of the 5% (or any other percentage if prescribed in the contract) of the total contract value. In case of inordinate delay (para 9.3.3-2 above) this maximum deduction shall be 10% of the total contract value.
2. In contracts governed by any variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or as far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation, one or more extensions of the delivery period with reservation of the right to LD are granted.
3. As mentioned in para 9.5.2-3-(e) below, for purpose of GST, liquidated damages should be shown as deductions on the invoice value by the contractor.

9.3.10 Waiver of LD

1. There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the Competent Authority with consultation of Finance may be taken and justifications recorded.
2. Government establishments/Departments, as distinct from PSUs, which execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the Head of Department or the Government Department concerned.
3. In the case of development/indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

9.3.11 Handling Deliveries at the last moment or after the Expiry of the Delivery Period

1. As per law, if stores are accepted after the expiry of the delivery date of a particular instalment without an extension in the delivery period having been

given, even duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

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

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

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

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

9.3.12. Minor Short/ Excess Deliveries

Minor shortfall/ excess deliveries in the last/ final consignment are unavoidable due to the manufacturing and supply chain vagaries. Although to close the contract, an amendment may require to be issued, yet to simplify the process, the consignee receiving the material can be authorised to treat the Contract as completed, provided the deliveries are short/ excess upto 5 per cent of the total value of the Contract or Rs. 5 Lakhs, whichever is less. Payment will be made without the issue of formal contract amendment and without reference to the ultimate user/ indentor. This shall not be applicable to indivisible items or machinery and plants.

Chapter-9-A

Quality Assurance and Inspections

9.4. Quality Assurance and Inspections

9.4.1 Quality Assurance (QA)

1. In the context of procurement of goods, the quality assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the standards of quality and serve the purpose for which it is being procured. QA consists of three components:
   a) Defining quality standards;
   b) Planning assurance of quality;
   c) Measurement of quality.
2. The description and TS define the quality standards expected from the product.
3. Planning for QA is done by specifying the qualifications criteria for the suppliers to ensure that they have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances, and methods of measurement of various parameters that constitute the standards of quality. This also involves laying down the type of inspection agency for inspection.
4. Measurement of quality is done through a scheme of inspections at the contract management stage, which lays down the actual process of inspection.

9.4.2 Inspections – Measuring Quality Standards

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

9.4.3 Types of Inspection

1. **Pre-dispatch Inspection**:
   a) A pre-dispatch inspection may be conducted either during various stages of the production process (which is known as stage inspection) or on the production of the finished products but before the dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have

a considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again upon receipt as a matter of abundant precaution.

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

c) The supplier should bear the testing charges for samples, and this should be made clear at the enquiry stage itself to avoid claims later/or affect his position in the comparative statement of offers. Any special testing involving significant financial implications shall be settled prior to placement of the order, and such costs should form part of the evaluation.

d) In the case of offshore supplies, the pre-dispatch inspection clause shall be incorporated in the purchase order wherever required:

e) The Port may depute its representative or a third-party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;

f) Alternatively, the Port shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HoD of the Indenting Department should be obtained, and the reasons for it should be recorded.

g) Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Port shall also be carried out by an officer of the Indenting Department or a third-party inspection agency, as the case may be.

h) It has been brought to the notice of the Department of Expenditure that the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with the need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged so that Inspections are not compromised. Necessary steps may be taken to avoid such provisions in the contracts with suppliers/ vendors strictly. Please also refer to para 3.5-1.

2. **Inspection of Goods on Receipt at Consignee/User's Site**:

a) **Post-delivery inspection** is carried out upon receipt of goods before acceptance. This should be typically done for goods that are available off-

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

b) **In procurement involving samples** (please refer to para 2.2.1-9, discouraging evaluation of samples/ demos after bid opening), there should be three sealed reference samples (one with the Port, one for Inspection and one with the contractor for guidance during manufacture). The Contract may, if considered necessary, also provide for the submission of a pre-production sample matching the Port's reference sample before giving clearance for bulk production of the supply. In such cases, supplies/ pre-production samples must be inspected for indeterminate characteristics with the reference sample for inspection, whereas for the remaining characteristics it must be in conformity with the laid down drawings/specifications (which may be done by any other type/ agency of inspection, if so provided in the contract). In the case of pre-production samples, a go-ahead for bulk production shall not be given unless these pass the inspection. However, delay should be avoided in grant of clearance.

c) The Procuring officer has the **right to reject** the goods upon receipt during the final inspection of delivery even though the goods have already been inspected and cleared at the pre-dispatch stage by the Port's inspector. However, such rejection should be strictly within the contractual terms and conditions, and no new condition should be adopted when rejecting the goods during the final inspection.

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

e) In case of rejection of goods at this stage, the material rejection advice/rejection memo should be sent to all concerned, which is the firm, Port, pre-inspecting agency, paying authority, associate bill paying authority, and so on. The concerned paying authority, as per the contract and associate bill paying authority, should note the rejection advice details in its recovery register to effect recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain the same in terms of the sequence of pre-inspection/ inspection as laid down in the contract prior to acceptance by the consignee.

In case of acceptance of the replacement supply/ rejected supply after rectification, the earlier issued material rejection advice/ rejection memo should be withdrawn under advice to all concerned.

3. **Manufacturer's Quality Self-certification**:

a) In case goods are imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure on the Port. In such a situation, the Port may substitute pre-dispatch inspection by its inspector with the manufacturer's in-house inspection report and Quality Self-certification. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on should also be kept in view, and appropriate decisions should be made. To check the reputation and background of the supplier, the Port may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm. Furthermore, trustworthy publications such as Thomas Register, Dun and Brad Street Register, and so on are also available in the USA and Europe and provide authentic technical and financial data and details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose. Acceptance of materials under the firm's quality self-certification may be considered where:

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

ii) At the Contract Management stage, where pre-dispatch provisions exist, if the user department justifies substituting the Manufacturer's Quality Self-certification instead of pre-dispatch inspection to meet urgent requirements from a reputed manufacturer's as per sub-para-a) above, and where the firm is agreeable to 100 (hundred) per cent payment against the consignee's receipt and acceptance, this waiver may be approved by Competent Authority. In such cases, the user Departments themselves should be responsible for ensuring the quality of goods supplied. Justification for the waiver should be recorded.

4. **Inspection on Installation and Commissioning:**

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

9.4.4 Types of Inspection Agencies

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be

done with the approval of the Competent Authority, justifying the rare circumstances, and ensuring that no undue benefit accrues to the contractor.

1. **Internal Inspection Authorities**:

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

2. **External Inspecting Authorities**:

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

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

      i) External testing may invariably be done by nationally accredited or reliable laboratories, preference being given to the National Test House (NTH). For testing the samples drawn from the lots offered by the supplier, an inspection agent qualified to conduct random sampling in accordance with Quality Assurance requirements should make the selection of samples;

      ii) Test reports must contain the values obtained in the tests besides fail/pass results. The laboratory must preserve the sample and test records for a period of three years;

      iii) The Department should lay down a liability statement for costs expended on tests, dispatch of samples, transportation costs, test charges, and so on., in respect of samples tested at outside laboratories as may be applicable and

      iv) In cases where the samples are to be tested at the supplier's cost because of the non-availability of his own testing arrangements, the responsibility of depositing the testing fees would rest with the supplier.

v) Normally, unless otherwise intended in the contract, charges of routine testing prior to dispatch of materials are to be borne by the supplier and charges of testing of materials after receipt by the consignee are to be borne by the Port. The contract should clearly state the responsibility for the cost of materials expended in tests and charges for special tests, e.g., type tests or tests at external labs. Even where the Port is responsible for testing charges, if the material fails in the test, the charges shall become the responsibility of the seller.

3. **Joint Inspection on Complaint**:

In case a written complaint is received from the supplier disputing the rejection of goods by the Port (please refer to para 9.4.3-2-(e), it should be jointly investigated by a team consisting of an authorised representative of the Port, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier. In case the firm fails to associate with a joint inspection, it should be held with the pre-inspecting agency.

9.4.5 Issue of Inspection Report

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

1. Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for the safekeeping of these articles and shall ensure that unauthorised persons do not misuse them. Unserviceable seals, pliers, stamps, stickers, holograms, and so on shall be returned to the concerned issuing official. The Port shall lay down detailed guidelines covering all these aspects. For security reasons and to avoid irregular or incorrect issues, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. The Port should also develop a foolproof system to avoid any fraudulent and unauthorised use of the inspection notes. All these security issues can be more easily addressed in digitally signed inspection notes.
2. There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, which is the period by which the supplier must dispatch the accepted goods to the consignee in terms of the contract. The

number of copies of the inspection notes and their distribution for distinct types of inspections will be as prescribed by the Port/indentor Department;

3. Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name stamp along with the designation and code number of the officer authorised to sign and issue inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be attested with the inspecting officer's full signature in ink. The Accounts Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places, and any correction duly authenticated;

4. Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;

5. A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'numbers' and materials are such that they comprise several components or accessories, the inspection report should be issued only when all parts, components and accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference to the certificate issued abroad;

6. For materials that the inspecting officer has rejected, the rejection inspection report should be issued immediately following the completion of the inspection. In case of total rejections, no copies should be issued for payments or the accounts office. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint (or a chisel) mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and

7. No 'certified true copy' of the lost original payment copies should be issued until a 'nonpayment certificate' has been received from the accounts officer concerned stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as a "certified copy." This endorsement should be attested in full in indelible ink by the officer, proving a cross reference to the accounts officer's non-payment certificate with the name stamp and the designation and code number of the officer issuing the duplicate copy.

9.4.6 Material put up for Inspection towards the End of Delivery

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

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

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

4. **Franking Clause on Acceptance and Rejection:** In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below. This clause may also be incorporated in the conditions of the contract:

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

9.4.7 Approval of Acceptable Deviations

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

Deviations from the contract specifications or requirements not affecting price, quality, performance, and other terms of the contract may be allowed (with or without a nominal rebate) at the level of the Competent Authority in consultation with the user Department on the merits or nature of deviations.

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

9.4.8 Warranty Clause

1. If included, in the case of Works and Capital Equipment, the Warranty clause in the Contract warrants that Goods supplied by the Contractor would continue to conform to the description and quality during the specified warranty period (usually, 24 months after delivery or 18 months from the date of placement in service, whichever is sooner). Obligations of the contractor under the warranty clause shall survive even though The Goods may have been inspected, accepted, installed/ commissioned, and paid for by the Port or the contract is terminated for any reason whatsoever. In the procurement of goods other than capital equipment (and in the case of low-value capital goods, say up to rupees one lakh), a warranty clause is not called for.
2. The Port shall promptly notify in writing to the contractor, during the period above if the said goods/ stores/ articles are discovered not to conform to the description and quality or have deteriorated, otherwise than by fair wear and tear (the decision of the Port in that behalf being final and conclusive).
3. Upon receipt of such notice, the contractor shall, within 14 days (or within any other period, if stipulated in the contract), expeditiously repair, or replace the defective Goods or parts thereof, free of cost, at the ultimate destination. The Contractor shall take over the replaced parts/ Goods after providing their replacements, and no claim shall lie on the Port for such replaced parts/ Goods after that.
4. A penalty of 0.5% (half per cent, or as specified in the contract) of the contract value for every week of delay in response time beyond the specified time as detailed above shall be recoverable from the Performance/ Warranty Guarantee. The maximum penalty for warranty failure will be 5% (Five per cent) of the

contract value during the whole warranty period. If there is further such delay after reaching this limit, the Port shall be entitled to encashment of the whole of Performance/ Warranty Guarantee Bonds, besides recording the adverse performance of the contractor for future tenders.

5. In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period.

6. If the contractor, having been notified, fails to rectify/ replace the defect(s) within 21 days (or within any other period, if stipulated in the contract), it shall amount to a breach of Contract for default, and the Port shall avail any or all remedial action(s) thereunder, including forfeiture of Warranty/ Performance Bank Guarantee.

Chapter-9-B

Cost Control-Prices, Taxes and Payments

9.5. Cost Control - Prices, Taxes and Payments

9.5.1 Prices

1. Prices to be charged by the contractor for the supply of Goods and provision of incidental Works/ Services shall be fixed and firm and same as the corresponding prices quoted by the contractor in its bid or during negotiations, if any, and incorporated in the contract except for any price adjustment authorized in the contract.

2. As mentioned (in para 6.6-2) above, if the prices charged are discovered to be higher than any controlled or regulated price, the Port shall have the right to either recover the overcharged amount or to terminate the contract, treating it as a misdemeanour or breach of contract and take any or all punitive remedies available thereunder.

3. The Port shall not pay for the consignment of incomplete components unless the full useable Scope of Goods (as per the contract/ Schedule of Requirement) has been received. Deficiencies in incidental Works/ Services shall also amount to incomplete delivery. Spares would not be paid for unless the primary Goods are received.

4. **Price and Exchange Variation Clauses**:

   a) In case the contract provides for a Price Variation Clause (PVC) or Exchange Rate Variation (ERV) clause or variation on any other account, the price shall be subject to adjustment on a quarterly basis, as per such clauses, only during the original Delivery Period. With the payment of such variations, no additional individual claim shall be admissible on account of fluctuations in market rates, increases in taxes/any other levies/tolls, etc.

   b) Please refer to para 6.6-5 for provisions of PVC (formula, base date, supply date, time lag for both base/ supply dates, lower and upper cap on PVC);

   c) Any increase due to such variations during the extended delivery period, beyond the original delivery period, shall not be paid by the Port; however, it shall be entitled to any reduction during this period under the Denial Clause.

   d) Calculations for all variations should be based on the basic price without taxes and duties. Therefore, contracts involving customs duty, foreign exchange fluctuations, GST, duties and taxes, the percentage and element

of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element considered in the calculation of the price of the imported item. Taxes/ duties and penalties, e.g., LD, etc., if any, chargeable and payable ad-valorem shall be charged at the net price after variations.

e) If the Contract provides for some inputs to be supplied by the Port free or at a fixed rate, or advance or stage payments have been already made, the value of such inputs and advance/ stage payments shall be excluded from the value of the Goods supplied in the relevant quarter for payment/recovery of price variation.

f) If there is a downward price trend, the Contractor may tend to hide this fact. Therefore, while claiming payments where such variations are applicable, the contractor must submit its calculations for each invoice, even if the payment on account of these variations is zero. Price reductions due to such variations must be passed on to the Port. Care should be exercised to finalise the price before final payment is made and after obtaining data and documents in support of claims for escalation, if any. Where the suppliers submit no such claims, 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 because of a decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify the Port, and we undertake to refund and agree to the Port deducting from our future payment due any excess payment made to us in this regard."*

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

9.5.2 Payment of Taxes and Duties

1. The contractor shall be entirely responsible for all taxes, duties, fees, levies, etc., incurred until delivery of the Goods to the Port.

2. If applicable under relevant tax laws and rules, the Port shall deduct required taxes on account of GST Reverse Charge Mechanism; Tax Deducted at Source

(TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc. from all payments due to the Contractor and deposit these to respective authorities as per the existing law in force during the currency of the contract. In the case of foreign bidders, Corporate tax shall be deducted at source from each invoice as per instructions/orders of the Government of India, Indian Income Tax Authority.

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

   a) The payment of GST and GST Cess to the contractor shall be made only on the latter submitting a GST compliant Bill/ invoice indicating the appropriate HSN code and applicable GST rate thereon duly supported with documentary evidence as per the provision of relevant GST Act and the Rules made there under. The delivery shall be shown as being made in the name, location/ state, and GSTIN of the consignee only; the location of the procurement office of the Port has no bearing on the invoicing.

   b) The Port shall not pay a higher GST rate if leviable due to any misclassification of the HSN number or incorrect GST rate quoted mistakenly by the Contractor. Wherever the contractor invoices the Goods at GST rate or HSN number, which is different from that incorporated in the contract, payment shall be made as per applicable GST rate, or the GST rates incorporated in the contract/ invoice – whichever is lower. However, the Port shall not be responsible for the contractor's tax payment or duty under a misapprehension of the law. The Contractor shall be required to adjust his basic price to the extent required by a higher tax rate billed as per invoice to match the all-inclusive price mentioned in the contract.

   c) In case of undue profiteering by the contractor relating to GST tax, the Port shall treat it as a violation of the Code of Integrity in the contract and avail any or all punitive actions thereunder, in addition to recovery and action by the GST authorities under the Act.

   d) The contractor should issue receipt vouchers immediately upon receipt of all types of payments along with tax invoices after adjusting advance payments, if any, as per contractual terms and GST provisions.

   e) Liquidated damages (refer to para 9.3.9 above for its quantum) or any other reduction (Price Variation or Exchange Rate variation, etc.) should be shown as deductions on the invoice value by the contractor. Similarly, any increase due to any variation should be shown as added to the invoice value. The Contractor shall be required to adjust his basic price to the extent

required to adjust the applicable GST rate within the net balance invoice value.

f) While claiming reimbursement of duties, taxes, etc. (like GST) from the Port, as and if permitted under the contract, the contractor shall also certify that in case it gets any refund out of such taxes and duties from the concerned authorities later, it (the contractor) shall refund to the Port, the Port's share out of such refund received by the contractor. The Contractor shall also refund the appropriate amount to the Port immediately upon receiving the same from the concerned authorities.

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

4. **Customs Duty:** Regarding Customs Duty, the contractor shall specify the rate and the total amount of customs duty payable regarding imported goods duly indicating the corresponding Indian Tariff Classification (ITC-HS) applicable for the Goods in question.

5. **For Port eligible for availing Input Tax Credit**:

a) Contractors shall provide necessary documents/ compliances / invoices to enable Port (for commercially run entities) to avail of Input tax credit benefits under GST legislation.

b) The successful bidders should upload the details of the invoices raised on Port on the GST Network within the prescribed time limits and undertake to adhere to all other compliances under the GST regulations/ legislations.

c) In case any credit, refund or other benefit is denied or delayed to the Port due to any non-compliance of GST legislation by the bidder, such as failure to upload the details of the supply on the GST portal, failure to pay GST to the Government or due to non-furnishing or furnishing of incorrect or incomplete documents/ information by the bidder, the bidder would reimburse the loss to the Port or it shall recover may recover the same, but not limited to, the tax loss, interest and penalty.

9.5.3 Statutory Variation Clause:

Unless otherwise stated in the contract, statutory variation (fresh imposition and/ or variation) in applicable GST rate/ Customs Duties or other taxes and duties mentioned in the contract, only during the period from the date of submission of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/ re-fixed delivery period of the contract shall be borne by the Port. Any increase in the rates of GST beyond the original/ re-fixed delivery period shall be borne by the contractor. However, during such a period, the benefit of any reduction in the GST rate

must be passed on to the Port. However, GST rate amendments shall be considered for the quoted HSN code only, against documentary evidence, provided such an increase in GST rates is after the tender submission date and shall not be applicable for any misquotation of the HSN number or incorrect GST rate by the bidder. The Port is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

(Note: The 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). (Refer para 9.3.3-3)

9.5.4 Passing of Supplier's Bills

1. After the GRIR is issued, the invoice is received from the supplier, supported by relevant documents evidencing the award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted for based on the GRIR of approved materials. The invoice submitted by the supplier shall be verified and signed by the indenting officer, and the pay order form or any other relevant forms will be prepared by the Port and signed by an officer authorised to sign pay orders. The Port shall handle all correspondence with the supplier.
2. The documents needed from the supplier for the release of payment are to be clearly specified in the contract. The paying authority also verifies the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.
3. While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and that all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice and so on to claim the payment.
4. Deduction of applicable taxes at source from payments to suppliers will be made as per the existing law in force during the currency of the contract.
5. Electronic Bill (e-Bill) processing system was announced in Union Budget 2022-23, as part of 'Ease of Doing Business and Digital India eco-system' to bring broader transparency and expedite the process of payments. It will enhance transparency, efficiency, and faceless-paperless payment system. Suppliers and contractors shall submit their bills electronically through the e-Bill portal, wherever such facilities are available. Concerned authorities verify these bills for

discrepancies, authenticity, and adherence to rules. Once verified, the bills shall be approved for payment. The approved bills are integrated with the electronic payment systems. Funds are allocated from the relevant budget heads. The system generates payment orders. The e-Bill system allows real-time on-line tracking of bill processing by Suppliers.

9.5.5 Payments to the Contractor and Handling of Securities

1. 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. It should be ensured that all payments due to the firm, including the 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.
2. **Delay in payment to the contractors:** Port may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of the bill by the Supplier. Where interest is to be paid, the rate of interest should be the rate of interest of SBI Lending Rate on the date on which the payment has become due. In case of unwarranted discretionary delays in payments, as mentioned above, responsibility shall be fixed on the concerned officers. There should be a system to monitor delays in payments and to identify such unwarranted delays, including an online system for monitoring the bills submitted by contractors. Such a system shall provide contractors with the ability to track the status of their bills. It shall be mandatory for all contractor bills to be entered into the system with the date of submission and date of payment.
3. 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 24) 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.

Chapter-9-C

Logistics and Material Management

9.6. Logistics: Transportation, Receiving, Storage and Issue of Goods

9.6.1 Transportation of Goods

1. Special Instructions to Contractor/Supplier for Transportation, packaging, and Storage:
   a) Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transhipment and, if necessary, provision of escorts.
   b) In the case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage enroute, pollution problems, and conforming to the ISO 14001 standard.
   c) Special attention should be paid to the perishable goods, considering their time sensitive nature, regarding their packaging, transportation, handling, storage (cold storage/ cold chain), and FIFO (First In First Out) system of delivery.
   d) In case Port arranges transport, suitable instructions may be incorporated in the transportation contract accordingly.
2. Wherever the items make a full truckload, the suppliers should be advised to dispatch such items in a full truck direct to the designated consignee on a door delivery basis to the site. In such cases, the Port shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment, and the consignment shall be booked to the Port and not "self." All dispatch documents that is, railway/lorry receipts, goods consignment notes, airway bills, invoices, packing lists, freight memos, test certificates, and so on, shall be sent to the Finance, which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.
3. In the case of FOB/ FAS contracts, the Port shall make shipping arrangements. The Contractor/Supplier shall give adequate notice to the Port and its Forwarding Agents/ Nominees about the readiness of the cargo from time to time and at least six weeks' notice in advance of the required date of dispatch for finalising the shipping arrangements. In the case of CFR contracts, the contractor shall arrange the shipment as per the instructions from the Port. Should the Port intend to airlift all or some of the Goods, the contractor shall pack the Goods accordingly

upon receiving intimation to that effect. Such deliveries shall be agreed upon well in advance and paid for as may be mutually agreed.

9.6.2 Transfer of Title of Goods

1. The Title of goods and resultant rights and liabilities is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. Please refer to para 3.2-2-d of Appendix-GM-S2/A2.
2. Unless otherwise stated in the contract, notwithstanding any inspection and approval by the Inspecting Officer on the contractor's premises, dispatch/ delivery/ in-transit, or any payments made to the contractor. Title of goods shall pass on to the Port as specified by the terms of delivery and other conditions of the contract. Till such time, the Goods, and every constituent part thereof, whether in the possession or control of the contractor, his agents or servants or a carrier, or the joint possession of the contractor, his agents or servants and the Port, his agents, or servants, shall remain in every respect at the risk of the contractor and the Contractor shall be responsible for all loss, destruction, damage, or deterioration of or to the Goods from any cause whatsoever while the Goods. The Contractor shall alone be entitled and responsible for making claims against any carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage, or deterioration of the Goods entrusted to such carrier by the contractor for transmission to the ultimate consignee or the interim consignee, as the case may be.

9.6.3 Insurance

In case domestic goods are supplied on a CIF/ FOR destination basis, the contractor shall be responsible until all the goods contracted arrive in good condition at the destination. The contractor may, at its option, cover the transit risk in this respect by getting the Goods duly insured in his own name at his own cost.

In FOB and CFR offers for the import of Goods, the Port shall arrange the insurance. However, the contractor must give sufficient notice to the Port before the date of shipment so that the Insurance Cover for the shipment can be activated. The Contractor must coordinate to ensure that the Shipment sails only with Insurance cover in place. In the case of the import of goods, Port should proactively take timely and complete action as per the terms of insurance contract to protect interest of the organisation after the title of the goods has passed to him.

9.6.4 Distribution of Dispatch Documents for Clearance/Receipt of Goods

1. The supplier shall send all the relevant dispatch documents to the Port in time to enable the Port to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated into the contract. Within 24 (twenty-four) hours of dispatch, the supplier shall notify the

Port of the complete details of dispatch and supply the following documents by registered post/ speed post/ air mail/ courier (or as instructed in the contract).

2. The supplier should submit the number of copies of his invoice, as specified in the contract (five if not so specified). The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, as well as the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total price; the packing list shall include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards the processing of the bills for payment shall be as per the terms and conditions of the purchase order.

9.6.5 Receipt of Consignment

1. **Preliminary Inspection and Receipt:**

   a) At the time of the delivery at the stores, the storekeeper should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment. When opening the packages (if applicable), the storekeeper should initiate a preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles, or coils, as in the case of tools, rope, canvas, cables, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

   b) For Goods with a limited shelf life, the contractor shall ensure that at least 75% (or any other percentage stipulated in the contract) of shelf life remains a balance on the delivery date. The Port reserves its rights to reject expired products with less than such specified shelf life.

2. **Detailed Inspection on Receipt:** Before accepting the ordered goods, the storekeeper must ensure that the goods have been manufactured as per the required specifications and can perform the functions specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of the inspection and tests to be carried out and the stages and manner of carrying out these tests.

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

3. **Consignee's Right of Rejection of Pre-inspected Goods**:

Notwithstanding any approval which the Inspecting Officer may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the Goods where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Port, to inspect, test and, if necessary, reject the Goods or any part, portion or consignment thereof, after the Goods' arrival at the final destination within a reasonable time (usually within 90 days of original Inspection Report) after actual delivery thereof to him at the place of destination stipulated in the contract, if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

9.6.6 Goods Receipt and Inspection Report

1. If the received material successfully passes the quantity and quality checks, accounting of the material received shall be based on the Goods Receipt and Inspection Report (GRIR - Annexure 25) prepared after inspection and acceptance of the material, which the concerned officers will sign. This includes cases where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of Port prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While a preliminary receipt is only an acknowledgement of the quantity received, GRIR is an acknowledgement of receipt of the correct quantity as well as quality of goods. GRIR is a voucher that forms the basis for the supplier to claim payment as per the contract. It also is a voucher for the amount of material received in the inventory accounts. Along with the GRIR, material is handed over to the warehouse where it is to be stored.
2. In case the received material fails to pass quantity and quality checks, a rejection GRIR is issued, noting the reasons for rejection. If feasible, a yellow paint (or chisel) mark should be put on the rejected material to prevent its resubmission by the supplier. The Finance should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated

number of days (usually 21). During such time the materials lies with the consignee at supplier's risk and cost. Such removal should be permitted only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated, and identified.

3. In case the supplier does not lift the rejected goods within the stipulated time, a ground rent (say at 0.2% to 05% per day of the value of goods as per contract). If the supplier does not respond within a reasonable time, the Port may treat the material as scrap and dispose it off as deemed fit, under intimation to the supplier, to recover its dues. Such provisions should be part of the tender document.

4. Delay in preparation and release of GRIR delays payment to the supplier. Port must put in place a system of records/ monitoring and periodic inspection by senior supervisors/ officers so that GRIR is released without any undue delay (say not later than 21 days). A summary of such cases of undue delay may be requested and reviewed by the Head of the concerned department every month.

9.6.7 Storage and Issue of Inspected Goods

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

Chapter-9-D

Contract Administration

9.7. Contract Administration

9.7.1 Performance Security

1. The Contractor/Supplier must maintain the Performance Security of the required amount in a specified format during the currency of the Contract. In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within twenty-eight days of the issue of the amendment.
2. If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Port at its discretion to either terminate the Contract for breach of contract and avail any or all contractual remedies or without terminating the Contract, recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the contract or any other contract with the Port or any other Port.
3. The Port shall be entitled, and it shall be lawful on his part, to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
   a) Any default, failure, or neglect on the part of the contractor in the fulfilment or performance of the contract under reference or any other contract with the Port;
   b) for any loss or damage recoverable from the contractor which the Port may suffer or be put to for reasons of or due to the above defaults/ failures/ neglect;
   c) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Port shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
4. The performance security should be refunded to the contractor without interest after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations, including the warranty under the contract. No claim shall lie against the Port regarding interest on cash deposits or Government Securities or depreciation thereof. The senior officers

should monitor the return of Bid/ Performance Securities, and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Port to make the process transparent and visible.

9.7.2 Amendment to the Contract

1. 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. 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. However, due to several reasons, changes and modifications are needed in the contract. Where necessary/ inescapable, any modification will be carried out with the prior approval of the Competent Authority. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indentor may be consulted regarding the technical implications. Finance concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.
2. An amendment can concern any of the clauses of the contract, but in supply contracts, amendments often relate to the following:
    a) Increase or decrease in the quantity required, exercise of quantity option clause;
    b) Changes in the schedule of deliveries and terms of delivery;
    c) Changes in inspection arrangements;
    d) Changes in terms of payments and statutory levies; and
    e) Change due to any other situation not anticipated.
3. Amendment of the contract can be done only with the consent of both parties, except for those changes for which right of Port for suo-moto amendment (i.e., penalties etc.) is reserved in the Contract. Requests for such changes and modifications mostly emanate from the supplier. However, in a few cases, it may be necessary to amend the contract suo motu in the interest of the administration. In such cases, it is legally necessary to obtain clear acceptance of the amendment from the supplier. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Port, it shall be assumed that the contractor has consented to the amendment.
4. No amendment shall be binding on the Port unless and until the same is written and signed/ authorised by a competent authority.

9.7.3 Safeguards for Handing over Port Materials/Equipment to Contractors

For the performance of certain contracts, the Port may have to loan stores, drawings, documents, equipment, and assets (such as accommodation, identity cards, gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on a payment/hire basis. 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. 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. The Contractor shall use such property for the execution of the contract and no other purpose whatsoever. These assets shall remain the property of the Port, and the contractor shall take all reasonable care of all such assets. The contractor shall be responsible for all damage or loss from whatever cause caused while such assets are possessed or controlled by the contractor, staff, workers, or agents. As a measure of transparency, the possibility of provision of such resources by Port should have been announced in the tender document or at least requested by the contractor in the tender and written in the contract. 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 the usage of electricity, water, crane, accommodation, weighing facility, and so on.

9.7.4 Monitoring Supplier Performance and Obligations

1. As soon as the order is issued, an entry shall be made in the progress register of the supply order (Annexure 20), recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Purchase order-wise data regarding the execution by and performance of the supplier shall be maintained in this register. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on the performance of suppliers, and so on.
2. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to the 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 and is paying only for what is received. A sound system for monitoring the performance of the suppliers in a contract would also be useful in

selecting a good supplier for future procurement of the same or similar materials. Implementation of the contract should be strictly monitored, and notices should be issued promptly whenever a breach of provisions occurs.

9.7.5 Monitoring Supplier Obligations:

1. **Changes in Constitution/ Financial Stakes**: The Contractor must proactively keep the Port informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract since that may vitiate the legal basis of the Contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:

   a) A new partner shall not be introduced in the firm except with the prior consent in writing of the Port, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.

   b) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Port may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.

   c) In case the contract not terminated as provided in Sub-para (b) above,

      i) the remaining partners should give a written undertaking to perform the contract and accept all liabilities (including those of the expired/ retired partner) incurred by the firm under the contract before the date of such an event.

      ii) notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Port in writing or electronically.

2. **Obligation to Maintain Capability- Equipment & Manufacturing Facilities:** The contract is awarded to the contractor based on specific "Capability-Equipment & Manufacturing Facilities". Such capability needs to be sustained during the contract period, for its smooth execution and performance. The Contractor is contractually bound to maintain such capability during the execution of the contract. Any change that would impact the performance and execution of the contract, should be proactively brought to the notice of the Port within 7 days of it coming to the Contractor's knowledge. Contractor should also indicate remedial measures he is taking in this regard, and how he proposes to ensure smooth execution of contract.

3. **Avoiding Conflict of Interest:** Neither the contractor nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, during the term of this Contract, any business or professional activities in India that would conflict with the activities assigned to them under this Contract and after the termination of this Contract, such other activities as may be stipulated in the contract.

4. **No Assignment/ Sub-contracting:** The contractor shall not save with the previous consent in writing of the Port, sublet, transfer, or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever. He shall notify the Port in writing of all subcontracts awarded under the contract if not already stipulated in the contract, in its original bid or later. Such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract. The subcontract shall only be for items bought out and incidental works/services. Subcontracts must comply with and should not circumvent the Contractor's compliance with its obligations. If the Contractor sublets or assigns the contract or any part thereof without such permission, the Port shall be entitled, and it shall be lawful on his part, to treat it as a breach of contract and avail any or all remedies thereunder.

5. **Indemnifying Port regarding Intellectual Property (IPR):** All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Port and subject to laws of copyright. They must not be shared with third parties or reproduced, whether in whole or part, without the Port's prior written consent. The contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Port, together with a detailed inventory thereof. The contractor shall indemnify the Port against any breach of the third party's IPR. The Contractor (and its employees and subcontractors) shall maintain confidentiality and secrecy of the Port's information provided to it (or that it comes across during execution of the Contract).

9.7.6 Closure of Contract

1. While making the final payment to the contractor and before releasing the PBG, it should be ensured that nothing is outstanding from the contractor because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released, a "no claim certificate" may be obtained from the contractor as per the format given in Annexure 24.

2. The contract shall stand closed upon

   a) Successfully perform all obligations by both parties, including completion of warrantee obligations and final payment.

b) Termination and settlements after that, if any.

3. At least in large contracts [above Rs. 50 (Rupees Fifty) lakhs], it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

4. **Materials Reconciliation**: The stores and/or the indentor should confirm that all materials ordered in the contract and paid for have been received in good condition and that there is no shortfall. A full reconciliation of all raw materials, parts, and assembly provided to the contractor should be done, including wastages and scrap/off-cuts returned.

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

   a) Achievement of performance standards of material/equipment supplied;

   b) Installation and commissioning;

   c) Support service during the warranty period, which has ended on _____;

   d) Training of operators/maintenance staff;

   e) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities, and assets loaned to the contractor;

   f) Support during annual maintenance contract (if it was part of the contract), which has ended on _____.

6. **Payment Reconciliation**: The indenting/materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

   a) LD;

   b) Price reduction enforced on account of shortfall in performance of material/equipment;

   c) Variations/deviations from the scope of the contract;

   d) Overpayments/duplicate payments, if any;

   e) Services availed from Port and vacation thereof such as accommodation, electricity, water, security, transport, cranes, and other machinery, and so on,

   f) Demurrage, insurance premiums or claims, customs duties, and so on;

   g) Material reconciliation;

h) Price and exchange rate variations;

i) Statutory duties paid on behalf of the contractor by Port;

j) Inspection charges or loss of material in testing.

7. On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released, and its acknowledgement is taken from the contractor.

8. On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after the expiry of the applicable mandatory retention period with the approval of the Competent Authority. However, Port, at its discretion, may retain important records for future reference.

Chapter-9-E

Breach of Contract, Remedies and Termination

9.8. Breach of Contract, Remedies and Termination

9.8.1 Breach of Contract

1. In case the contractor undergoes insolvency or receivership, neglects, or defaults or expresses inability or disinclination to honour his obligations relating to the performance of the contract or ethical standards or any other obligation that substantively affects the Port's rights and benefits under the contract, amount to a breach of Contract. Such defaults could include inter-alia:

   a) **Default in Performance and Obligations:** if the contractor fails to deliver any or all the Goods or fails to perform any other contractual obligations (including Code of Integrity or obligation to maintain production capability (equipment & manufacturing facilities) based on which contract was awarded) within the period stipulated in the contract or within any extension thereof granted by the Port it *shall* be treated as a breach of Contract.

   b) **Insolvency:** If the contractor or any partner thereof, shall at any time, be adjudged insolvent or shall have a receiving order or order for the administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, the Port *may consider* it as a breach of Contract.

   c) **Liquidation:** if the contractor is a company being wound up voluntarily or by order of a Court or a Receiver, Liquidator or Manager on behalf of the Debenture-holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture holders to appoint a Receiver, Liquidator or Manager, the Port *may consider* it as a breach of Contract.

2. As soon as a breach of contract is noticed, a show-cause 'Notice of Default' shall be issued to the contractor, giving two weeks' notice, reserving the right to invoke contractual remedies. After such a show-cause notice, all payments to the contractor would be temporarily withheld to safeguard needed recoveries that may become due on invoking contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

9.8.2 Termination of Contract for Default

1. In the event of an unsatisfactory resolution of 'Notice of Default' within two weeks of its issue as per para above, the Port, if so decided, shall by written 'Notice of Termination for Default' sent to the contractor, terminate the contract in whole or in part, without compensation to the contractor. Before cancelling the contract and taking further action, it may be desirable to obtain legal advice. Such termination shall not:

   a) Prejudice or affect the rights and remedies which have accrued and/ or shall accrue to the Port after that.

   b) affect the performance of the contract to the extent not terminated unless otherwise instructed by the Port,

   c) extinguish warranty obligations of the contractor for the goods already supplied, if any.

2. If the contract is terminated in whole or in part, additionally, recourse may be taken to any one or more of the following actions:

   a) Temporarily withhold payments due to the contractor till recoveries due to invocation of other contractual remedies are complete.

   b) Call back any loaned property or advances of payment, if any, with the levy of interest rate (e.g., the interest rate of the General Provident Fund – GPF) prevailing on the date of release of advance payment, plus 2% to be compounded quarterly.

   c) Recover liquidated damages and invoke the denial clause for delays.

   d) Prefer claims against insurance, if any.

   e) Encash and/ or Forfeit performance security or

   f) Invoke any other contractual securities,

   g) Initiate proceedings in a court of law for the transgression of the law, tort, and loss, which are not addressable by the above means.

9.8.3 Determination of Contract for Default/ Convenience of Port or Frustration of Contract

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

performance under the contract is terminated and the date with effect from which such termination shall become effective.

2. Such termination shall not prejudice or affect the rights and remedies accrued and/ or shall accrue after that to the Parties.

3. Unless otherwise instructed by the Port, the contractor shall continue to perform the contract to the extent not terminated.

4. All warranty obligations, if any, shall continue to survive despite the termination.

5. Determining the contract by Port for its convenience is not its legal right – and the contractor must be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.

6. The Goods and incidental Works/ Services that are complete and ready in terms of the contract for delivery and performance within thirty days after the contractor's receipt of the notice of termination shall be accepted by the Port as per the contract terms. For the remaining Goods and incidental Works/ Services, the Port may decide:

   a) To get any portion of the balance completed and delivered at the contract terms, conditions, and prices and/ or

   b) To cancel the remaining portion of the Goods and incidental Works/ Services and compensate the contractor by paying an agreed amount for the cost incurred by the contractor, if any, towards the remaining portion of the Goods and incidental Works/ Services.

9.8.4 Frustration of Contract

Upon a supervening cause occurring after the effective date of the contract, including a change in law beyond the control of either party, whether because of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. The parties shall use reasonable efforts to agree to amend the contract as may be necessary to complete its performance. However, if the parties cannot reach a mutual agreement within 60 days of the initial notice, the Port shall issue a 'Notice for Determining the contract' and terminate the contract as per para 9.8.3 above, due to its frustration, without repercussions on either side.

9.8.5 Limitation of Liabilities

1. Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the parties, whether under the contract, in tort or otherwise, shall not exceed

the total Contract Price (less payments already made in case of Port), provided that this limitation shall not apply to the cost of repairing or replacing defective equipment/ work under warranty Clause, Defect Liability clause or otherwise, or to any obligation of the contractor to indemnify the Port concerning IPR infringement.

2. Neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which the other Party may suffer in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Port.

Chapter-9-F

Dispute Resolution

9.9. Dispute Resolution

9.9.1 Disputes

1. Normally, there should not be any scope for dispute between the Port and supplier after entering a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the contract, leading to a dispute between the Port and the supplier. Therefore, the conditions governing the contract should contain suitable provisions for the settlement of such disputes or differences binding on both parties.

2. All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, within thirty (30) days from aggrieved Party notifying the other Party of such matters; whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Procurement Officer and the contractor within thirty (30) days from one party notifying the other of such matters, whether before or after the completion or termination of the contracts, shall be referred to as a "Dispute".

3. In its directives (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024) regarding contractual disputes, Department of Expenditure, Ministry of Finance has stressed that:

   > *"Government departments/ entities/ agencies should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."*

4. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims, citing relevant contractual clauses to the designated authority, and requesting to invoke the following dispute resolution mechanisms. The Dispute shall be attempted to be resolved, as far as feasible, before recourse to courts through dispute resolution mechanisms available in the contract, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

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

9.9.2 Excepted Matters

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

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

9.9.3 Adjudication

1. After exhausting efforts to resolve the Dispute with the Purchasing Officer executing the contract on behalf of the Port, the contractor shall give a 'Notice of Adjudication' specifying the matters which are in question or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to Head of Procurement or any other authority mentioned in the contract (hereinafter called the "Adjudicator") for invoking resolution of the dispute through Adjudication.
2. Where necessary, e.g. matters of high value, Port may proceed with adjudication by a high-level committee as para (9.9.4-3-(a), (b) (i), (d) and (e) below.
3. During his adjudication, the Adjudicator shall give the contractor an adequate opportunity to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any conciliation, arbitral or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.
4. If not satisfied by the decision in adjudication, or if the adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to invoke the process of Mediation as follows.

9.9.4 Mediation

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

i) A retired judge.

ii) A retired high-ranking officer and/ or technical expert.

b) In cases where a HLC is constituted, the Government department entity/ agency may either

i) negotiate directly with the other party and place a tentative proposed solution before the HLC or

ii) conduct mediation through a mediator and then place the tentative mediated agreement before the HLC or

iii) use the HLC itself as the mediator.

c) This will enable decisions taken for resolving disputes in appropriate matters to be scrutinized by a high-ranking body at arms-length from the regular decision-making structure, thereby promoting fair and sound decisions in the public interest, with probity.

d) There may be rare situations in long-duration works contracts where a renegotiation of the terms may best serve public interest due to unforeseen major events. In such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee before approval by the competent authority.

e) Approval of the appropriate authority will need to be obtained for the final accepted solution. Section 49 of the Mediation Act 2023 is also relevant in this regard.

f) Mediation agreements need not be routinely or automatically included in procurement contracts/ tenders. The absence of a mediation agreement in the contract does not preclude pre-litigation mediation. Such a clause may be incorporated where it is consciously decided to do so.

g) Disputes not covered in an arbitration clause and where the methods outlined above are unsuccessful should be adjudicated by the courts.

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

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

a) Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.

b) Within 30 days of receipt of the "Notice of Mediation", the Head of the Procuring Organisation shall propose names of three likely mediators from its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.

c) If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.

d) As brought out in Annex-2 of Annexure 30, in contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).

e) After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.

5. **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at any other place.

6. **The Process**:

a) The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.

b) Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Indian Evidence Act (This Act would be replaced by Bhartiya Sakshya Adhiniyam (BS), 2023 from 1st July 2024), 1872 shall not be binding on the mediator. The parties can determine the mediation's venue, manner, and language.

c) **Confidentiality**: All the acknowledgements, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation; acceptance/ willingness to accept proposals in the mediation; documents prepared solely for the conduct of mediation are strictly confidential. These can neither be relied upon as evidence in any subsequent court proceedings nor be asked to be disclosed by any court/ tribunal. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator

and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.

d) **Online Mediation**: The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.

e) The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in identifying issues, advancing better understanding, clarifying priorities, exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.

f) **Termination of Mediation**: The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is not completed within this timeline, the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties or the MSP. Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by a party(ies) in writing, addressed to the mediator and the other parties that they wish to opt out of mediation. On termination of Mediation, if the dispute is still alive, the aggrieved party shall be free to invoke Arbitration.

g) **Mediated Settlement Agreement (MSA)**: If the parties resolve the dispute and execute a mediated settlement agreement ("MSA"), then the Mediation is successful. An MSA is a written agreement settling some or all disputes and may extend beyond the disputes referred to mediation. It must be valid under the Indian Contract Act, signed by both parties and duly authenticated by the Mediator for the parties or the MSP. The Act provides options for MSA registration. During the pendency of proceedings, parties can also execute other agreements, settling some of the subject matter disputes.

h) **Challenge to MSA**: MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.

i) **Execution of MSA**: If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment

or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.

j) **Costs**: The parties shall equally bear all costs of mediation, including the fees of the mediator and the charges of the mediation service provider.

k) **No claim of Interest during Mediation proceedings**: Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.

l) The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.

9.9.5 Arbitration

1. **Arbitration Agreement:** If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015 and 2021]. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the Tender Document (Please refer to the Model Tender Document) indicating the arbitration procedure to be followed, based on which the Arbitration Act shall become applicable.

2. This Agreement shall continue to survive termination, completion, or closure of the Contract for 120 days after that. The venue of arbitration should be the place from where the contract has been issued.

3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to the Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in the MSMED Act 2006, these provisions shall prevail over this Agreement.

4. **Government Guidelines on Arbitration in Contracts**: Department of Expenditure, Ministry of Finance has issued (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024) following guidelines for arbitration in contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises [CPSEs], Public Sector Banks [PSBs] etc. and Government companies):

a) Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.

b) As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crores. This figure is regarding the value of the dispute (not the value of the contract, which may be much higher). It may be specifically mentioned in the bid conditions/ conditions of the contract that arbitration will not be a method of dispute resolution in all other cases.

c) Inclusion of arbitration clauses covering disputes with a value exceeding the norm specified in sub-para (b) above should be based on careful application of mind and recording of reasons and with the approval of the Managing Director.

d) In matters where arbitration is to be resorted to, institutional arbitration may be given preference (where appropriate, after considering the reasonableness of the cost of arbitration relative to the value involved).

e) General or case-specific modification in the application of the above guidelines may be authorised by the Managing Director.

9.9.6 Foreign Arbitration

1. The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.
2. When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.
3. The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true, especially for large-value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or India's arbitration rules, whereby it may be in India or any neutral country.

9.9.7 Notice for Arbitration

1. 'The Appointing Authority' to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

2. In the event of any dispute as per para 9.9.1 above, if the Adjudicator fails to decide within 60 days (as referred in para 9.9.3 above), or the mediation is terminated (as referred in para 9.9.4 above) then, parties to the contract, after 60 days but within 120 days of 'Notice of Dispute" shall request the Appointing Authority through a "Notice for Arbitration" in writing requesting that the dispute or difference be referred to arbitration.

3. The "Notice for arbitration" shall specify the matters in question or the subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

9.9.8 Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of the Arbitrator(s)

9.9.9 Appointment of Arbitrator

Notwithstanding the procedures outlined in the following paragraphs, Arbitrators can be appointed through mutual consent/ agreement.

1. **Qualification of Arbitrators**:

   a) In the case of retired officers of The Procuring organisation, they shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 year prior and must not be over 70 years of age on the date of Notice for arbitration.

   b) In the case of serving officers, they shall not be below JA Grade level.

   c) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as an officer of the Procuring Organisation, expressed views on any or all the matters under dispute or differences. A declaration to this effect (Annexure 35) shall be taken from the Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely because one or more arbitrators had, in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.

   d) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.

   e) Not be other than the person appointed by The Appointing Authority, and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2. **Panel of Arbitrators**:

The procuring Organisation may prepare, with the approval of the head of the procuring organisation, a panel of serving and retired officers who are willing and qualified (as per para above) to be empanelled as Arbitrators based on integrity, ethics, the experience of dealing in contracts/ tenders, temperament of taking fair decisions, feedback, general image, career profile etc. Such persons should have vigilance clearance and should not be working in the vigilance wing. The performance of empanelled arbitrators should be reviewed annually. The empanelment of a retired officer as arbitrator shall be limited to three procuring entities only, and at any given time, a maximum of two arbitration cases shall be assigned to any arbitrator in Port.

3. **Replacement of Arbitrators**:

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a reconstituted Tribunal may, at its discretion, proceed with the reference from the stage at which the previous arbitrator (s) left it.

4. **Appointment of Arbitrator**:

a) Appointment of Arbitrator where the applicability of section 12 (5) of the Arbitration and Conciliation Act has been waived off:

i) In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the procuring organisation, not below Junior Administrative Grade, nominated by the Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the designated Appointing Authority.

ii) In cases not covered by sub-para i) above, the Arbitral Tribunal shall consist of a panel of three serving officers not below Junior Administrative Grade or two serving officers not below Junior Administrative Grade and a retired officer (retired not below the rank of Senior Administrative Grade Officer), as the arbitrators. For this purpose, the Appointing Authority shall send a panel of at least four (4) names of Officers, which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator, to the Contractor within 60 days from the day when a written and valid demand for arbitration is

received by the Appointing Authority. The contractor will be asked to suggest at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request to him. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).

iii) The serving officer working in arbitral tribunal in the ongoing arbitration cases as per sub-para i) and ii) above can continue as arbitrator in the tribunal even after his retirement.

b) Appointment of Arbitrator where the applicability of Section 12 (5) of the Arbitration and Conciliation Act has not been waived off:

i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the arbitrator within 30 days from the receipt of the names of the Contractor's nominees.

ii) In cases where the total value of all claims in question added together exceeds Rs. 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Officers, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement date to the

Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days of the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).

c) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed with the appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.

d) **Failure to Appoint Arbitrators**: If the Appointing Authority fails to appoint an arbitrator, or two appointed arbitrators fail to agree on the third arbitrator, within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

9.9.10 The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.

2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The

Arbitration Act, the arbitrator, at his discretion, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration. The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.

3. If the Adjudication and/ or Mediation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach the designated authority for such mechanisms before the Arbitration proceedings are started.

4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless it has granted an extension.

5. On receipt of such claims, the respondent shall submit its defence statement and counterclaim (s), if any, within 60 days of receipt of the copy of claims, unless the Arbitral Tribunal has granted an extension.

6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.

7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.

8. **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis, and no adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.

9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for an extension of time awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.

10. **Cost of Arbitration and Fees of the Arbitrators:** The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the

Arbitrator shall be governed by instructions issued on the subject by the Port and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Port or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee. The arbitrator shall be entitled to a 50 per cent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act. Besides the above, the Arbitrator shall also be entitled to this extra fee in cases where the Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.

11. **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast-track procedure either before or after the commencement of the arbitration. The award in fasttrack arbitration is to be made out within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:

    a) The dispute is to be decided based on written pleadings only. Port may encourage Fast Track Procedure based on written pleadings only.

    b) The arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.

    c) An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.

    d) The parties are free to decide the fees of the arbitrator(s) for a fast-track procedure.

12. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal to seek interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court to make interim awards in the proceedings before it.

13. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations where the disclosure is necessary for the implementation or execution of the arbitral award.

14. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Port, continue during the arbitration proceedings, and no payment due or payable by the Port shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

15. **The Arbitral Award:** In the case of the Tribunal, comprising three members, any ruling on an award shall be made by a majority of members of the Tribunal. In the

absence of such a majority, the views of the Presiding Arbitrator shall prevail. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it. It shall be further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act. The award of the arbitrator shall be final and binding on the parties to this contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of a similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

9.9.11 Challenging Arbitration/ Judicial Awards

1. In matters covered by arbitration/ court decisions (Notified vide OM No. F. 11/21/2024-PPD issued by Department of Expenditure dated 03.06.2024), the guidance contained in 'General Instructions on Procurement and Project Management' dated 29.10.2021 (Notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021) should be kept in mind. In cases where there is a decision against the government/ public sector enterprise, the decision to challenge/ appeal should not be taken routinely, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.

2. In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest, which may become payable to the Ministry/ Department should the subsequent court order require a refund of the said amount.

3. The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first for payment of lenders' dues, second for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account after settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, and other

amounts withheld may also be released against BG (New rule 227A of GFR, 2017 notified vide OM No. F.1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021).

4. Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken routinely, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals, etc., sometimes resorted to postpone the problem and defer personal accountability. Casual appeals in arbitration / court cases have resulted in the payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

5. The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind to all facts and circumstances, including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and, after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.

6. Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest at a rate that is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in the aggregate, it is in the public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if, in some rare cases of insolvency, etc., recovery of the amount in case of success may become difficult.

7. The only circumstances in which such payment need not be made are when the contractor declines or is unable to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to this are liable to be held personally accountable for the additional interest arising in the event of the final court order going against the Port (As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021).

9.10 Contract Management – Risks and Mitigations

Risk-1

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

Mitigation-1

Any mobilisation or other advance payments should be as per the tender document/ Contract (refer to para 6.5.1) and only for justifiable cases. Terms of such advances should be expressly stated in the NIT/tender documents. The advance payment may be released in not less than two stages, depending upon the progress of the contract. The advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.

Risk-2

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

Mitigation-2

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

Risk-3

Supervising agencies/individuals are unduly influenced to alter the contents of their reports, so changes in quality, performance, equipment, and characteristics go unnoticed.

Risk-4

The contractor's claims are false or inaccurate and are protected by the person in charge of revising them.

Risk-5

Payment to the contractor is delayed intentionally or otherwise.

Risk-6

The contractor gets the final payment, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.

Risk-7

Every dispute lands up in arbitration or court cases since the Port is reluctant to grant compensation for its lapses to the contractor.

Mitigation-3 to 7

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

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

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

Risk-8

Agents/ Sub-contractors and partners, chosen in a non-transparent way, are unaccountable or are used to channel bribes.

Mitigation-8

Agents should only be as per the terms of the contract. Sub-contracting of the contract should normally not be allowed in the procurement of goods.

Chapter-10

Disposal of Scrap Goods

10.1. Scrap for Disposal

There accumulates, in every organisation, a large quantity of 'Goods' that is neither usable for the purpose for which it was originally procured nor of any other operational value. Such 'Goods' is generally called "scrap" and should be distinguished from other 'Goods' that can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair, even new 'Goods' that is surplus to the need of the organisation or its allied organisations and may command a fair price in the market not normally associated with scrap. This chapter is applicable to disposal of such Scrap Goods and is not applicable to disposal of assets that are not covered by the definition of 'Goods' as given in the 'Procurement Glossary' section of this Manual. (Thus, this chapter is not applicable to disposal of immovable assets, precious metals/ jewellery, works of art, Financial/ Business Assets e.g. stocks, shares, debentures, securities, shares in partnership firms etc).

10.2. Classification and Categorisation

It is important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use, for example, melting, re-rolling, burning, recycling, e-Waste (electronic Waste), hazardous waste and so on. Properly grouped and sorted scrap is likely to attract better value, help keep historical data of prices, and facilitate the fixing of reserve prices.

10.3. Survey of Materials for Classifying as Scrap for Disposal

1. Competent Authority to declare and dispose off Scrap Material, based on its assessed value (based on the 'Book Value' or if the Book value is either not available or has become negligible - 5% (five per cent) of the Original/ Market Value of new goods), may be laid down in the SoPP. Before any item of stores can be sold as 'scrap,' it should be declared as such by the Survey Committee (SC) appointed by the Head of Office and the sanction of the Competent Authority obtained for such a sale. The Competent Authority may relax this need for a survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers, etc., of small value (Rs. 15,000 – Rupees Fifteen Thousand). Lots of small values may also not require to be condemned by SC, on which the Head of Office may be given powers to declare such materials as scrap without a survey committee. However, this dispensation is subject to the furnishing of a certificate by the concerned departmental officer as laid down in

the SoPP, stating that the items being offered have been inspected by him and found unserviceable and unfit for any further use.

2. **Survey of Scrap:** Items may be identified as scrap in any of the following cases:

   a) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost, norms for utilisation of such equipment, and usability in the organisation or any other office must also be considered before deciding on scrapping the equipment and

   b) The item has a limited shelf life, exists in surplus quantities, and there is likely to be no future use of the item during the remaining period of its useful life.

   c) The reasons for declaring the item surplus obsolete or unserviceable should be recorded by the SC. A standard format for SC's recommendations for disposal of goods is provided in Annexure 26.

   d) SC may seek the approval of the Competent Authority with the concurrence of the Finance.

10.4. Modes of Disposal

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

1. **Petty Sales:** Small value scrap such as wastepaper or industrial sweepings, and so on, up to a value of Rs. 15,000 (Rupees Fifteen thousand) in each case, may be sold directly to the local scrap dealers on a summary quotation basis,

2. **LTE Mode:** Scraps more than Rupees Fifteen thousand up to Rupees Four Lakh may be sold on a limited tender basis to locally known scrap dealers in the relevant category.

3. **eAuction Mode:** Sale through the e-auction portal or a tender for disposal or traditional public auction may be resorted to for scrap value above Rupees Four lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;

4. **Direct Sale:** Certain useable machinery/ spare may still be useable by other Ports; these should be disposed off directly to the concerned organisation at book value plus overheads @ 20 (twenty) per cent plus freight @ (7.5 (seven and a half) per cent plus handling charges @12.5 (twelve and a half) per cent.

5. **Sales by Submission of Tenders:** Disposal may also be done by submitting bids in response to public invitations by Government Departments, PSEs, or private bodies for bids for supplying materials. This method of sale is particularly

suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit-to-use condition.

6. **Sale of Security Risk Scrap**: Scrap that is a security or safety risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of the Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) in the presence of a committee after obtaining Competent Authority's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.

7. **The following procedures would govern the sale of hazardous waste items** in addition to guidelines/notifications issued by the Central Pollution Control Board (CPCB)/ Ministry of Environment, Forest and Climate Change (MoEFCC) from time to time:

   a) The Batteries (Management & Handling) Rules 2001 or as amended from time to time shall govern the sale of old batteries/lead acid batteries;

   b) Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time, governs the sale of hazardous waste;

   c) e-Waste (Electronic Waste - Management) Rules, 2016 or as amended from time to time, governs the sale of e-Waste;

   d) Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In the case of lead-acid batteries, used/waste oils, and nonferrous metal wastes, in addition to submitting necessary valid registration from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEFCC)

   e) In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC (No Objection Certificate) from the concerned SPCB, with whom the buyer is registered, to the Port before taking delivery, failing which the buyer will be responsible for the consequences and the Port shall take further decisions as may be deemed fit.

10.5. Preparation for Disposal

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

2. **Determining Reserve Price**: In any mode of disposal, material should not be sold at rates per lot, but bids should be registered by rate per unit (number, length,

or weight) so that a complete check on the quantity delivered can be exercised at any time. The Head of Office holding the stock may determine the reserve price with the concurrence of the Finance and approval of Competent Authority. In case of large value disposals, a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2, para 2.1-2-(f) relating to the estimate of procurement cost. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register before the date of disposal. This register should be sealed immediately after the reserve prices of all lots are recorded in the register and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are given below. However, these methods are neither exhaustive nor mandatory. These methods should not be followed blindly, and there should be an application of mind in judging the reserve price:

a) Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original or Market cost of the new item;

b) Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;

c) The prevailing market price ascertained through a market survey

d) Costing analysis based on costs of various elements of the item (discounted for melting losses), labour charges, transportation costs, etc.

e) In cases where the reserve price cannot be fixed as per the procedure, a registered valuer may be engaged in the valuation of such material, and the Reserve Price Committee may consider the valuation given by the valuer while recommending the reserve price. However, the use of a valuer is not mandatory and is optional.

10.6. Conditions of Disposal Applicable to all Modes of Disposal

10.6.1 'As-Is-Where-Is' basis.

Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on an 'as-is-where-is' basis only, and the principle of caveat emptor (let the buyer be aware) will apply. 'As-is-where-is' means that the description/quality/quantity indicated is approximate, and the Port does not give any assurance or guarantee that the material will strictly adhere to the details given in the advertisement or e-auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated, nor can the bidder make any claim/compensation whatsoever on account of any defect in description or deficiency in the quantity and

quality. No plea of misunderstanding or ignorance of conditions put forth after confirmation of sale shall be accepted.

10.6.2 Inspection by Bidders

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

10.6.3 Right to Reject All Bids

The Port reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of the bid/ issue of the acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The Port shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

10.6.4 Goods and Services Tax

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

10.7. Disposal through Tender

1. Disposal of surplus or obsolete or unserviceable goods of assessed residual value above Rupees Four Lakh should be disposed of through tender, that could take place through the e-procurement portal or normal tendering. In the tender documents, General Conditions of Sale (GCS, in place of GCC in procurement tenders) may be laid out.
2. The broad steps to be adopted for this purpose are:
    a) Preparation of tender documents;
    b) Invitation of tender for the surplus/ obsolete/ unserviceable goods to be sold; c) Opening of bids;
    d) Analysis and evaluation of bids received;

e) Selection of the highest responsive bidder;

f) Collection of sale value from the selected bidder;

g) Return of bid security to the unsuccessful bidders.

h) Issue of sale release order to the selected bidder;

i) Release of the sold surplus goods to the selected bidder;

j) Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing off the goods through an advertised tender are:

i) The basic principle for the sale of such goods through an advertised tender is ensuring transparency, competition, fairness, and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;

ii) All required terms and conditions of sale are to be incorporated comprehensively in plain and simple language in the tender document. The applicability of taxes, as relevant, should be clearly stated in the document. Any statutory requirement as per para 10.4.7 may also be indicated, where applicable, in the Special Conditions of Sale. The tender document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;

iii) Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be 5% (five per cent) of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the tender document. The EMD shall be forfeited if the bidder unilaterally withdraws, amends, impairs, or derogates from his offer in any respect within the period of validity of his offer;

iv) Late bids, that is, bids received after the specified date and time of receipt should not be considered;

v) The bid of the highest acceptable responsive bidder should normally be accepted, and an acceptance/ sale order should be issued. Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where the price offered by that bidder is not reasonable, under exceptional circumstance (mutatis mutandis as per para 7.6.9), a negotiation may be held only with that bidder;

vi) In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be

forfeited, and other actions initiated, including resale of the goods in question at the risk and cost of the defaulter;

vii) In case the highest acceptable bidder cannot accept the total quantity to be disposed off, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;

viii) If the bidder's offer is not accepted, the bidder's EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful bidder shall remain with the disposing Department till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of the disposing Department;

ix) The offer should be examined by the competent level of the Tender Committee as per SoPP, and the Competent Authority should accept TC recommendations as per the laid down SoPP;

x) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);

xi) Successful bidders, hereinafter referred to as purchasers, shall have to submit an SD @ 25 (twenty-five) per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of a bank draft/pay order, drawn on any of the commercial banks in favour of the officer concerned as mentioned in the NIT;

xii) **Balance Sale Value (BSV)**: The successful bidder in an e-auction or tender sale may be allowed 15 (fifteen) calendar days (including the date of the acceptance letter/sale order) for payment of BSV. The Head of Office (or the Officer delegated by order as per SoPP), after taking into consideration the prevailing market rates and trends, may grant an extension of time for the payment of BSV with late payment charges @ one per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and;

xiii) Delivery Order: A delivery Order is an essential document required to be produced to take delivery of the material from the custodian.

Therefore, after depositing BSV, the Delivery Order should be issued, and the delivery should be made to the purchaser or his agent on the strength of the Delivery Order and after verifying the cashier's receipt.

10.8. Disposal through Auction

1. The Port may undertake an auction of goods to be disposed of either directly or through approved auctioneers;
2. The basic principles to be followed here are like those applicable for disposal through the advertised tender to ensure transparency, competition, fairness, and elimination of discretion. The auction plan, including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in the case of the advertised tender;
3. For entering and participating in the Auction, an EMD shall be taken from all bidders in the form of a bank draft/pay order drawn on any of the commercial banks in favour of the officer concerned, as mentioned in the Auction Catalogue. While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on (as already indicated earlier while giving wide publicity to it) should be announced again for the benefit of the assembled bidders;
4. During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 (twenty-five) per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the Port. The goods should be handed over to the successful bidder only after receiving the balance payment as in the case of sale through tenders;
5. The Competent Authority shall decide the composition of the auction team. The team should preferably include an officer of the finance Department and a representative of security staff.

10.8.1 Forward Auction on The GeM Portal:

1. GeM portal has started eAuction (Forward Auction) for disposal of assets and scrap (Machines, Agriculture & Forest Produce, Metal & Non-Metallic scrap, e-Waste, vehicles, Lube/Wast Oil, unused spares, Coal, Commercial & Residential Properties, Land, Industrial Plots. etc.).
2. Port is urged to use this feature of GeM portal.
3. **Registration and Creation of Auction Event by the Government Agency**:
   a) The role of the Government Agency Seller is called Forward Auction Seller/ Auctioneer (FA-SA). All buyers registered on GeM shall have the option to auto-enrol as FA-SA on the Forward Auction Platform. To register as FA-SA

on the Forward Auction Platform, the user first needs to register as a Secondary Buyer on GeM.

b) The role of bidders in the auctions is called Forward Auction Buyer/ Bidder (FA-BB). For registration, FA-BB on Forward Auction Platform, interested users need to click on the FA Bidder Registration link under the Forward Auction menu header from the GeM Home page. Vendor assessment is not required as QCI (GeM Vendor Assessment System) validates the mandatory/ voluntary compliance required for a service and the last 3 years of relevant government/PSE experience (service-specific). Fill in all the required details and the PAN information on the registration page. After the form submission, bidders need to verify their email ID, after which they can successfully register on Forward Auction. FA-BB must ensure they meet the eligibility criteria for GeM seller registration.

4. **Process of Auction**:

a) **Forward Auction**: All auctions are publicly published, other than limited auctions, so that the FA-BB can participate in the auction. Once the auction starts, all the events are highly secure and conducted strictly between the Auctioneer and a set of qualified Bidders on Forward Auction. After the auction ends, the auction result is made public for everyone to view, and the winning Bidders are intimated by email. General Terms and Conditions for the Forward Auction of GeM (GTC) will be applicable till the completion of the Forward Auction. Post completion of Forward Auction, ATC (Additional Terms and Conditions) of the seller will supersede the GTC (General Terms and Conditions of GeM).

b) **Creation of Auction Listing**: FA-SA can sell their assets on GeM by creating and publishing the auction on the GeM platform. To access the FA module, the Auctioneer must log in to the GeM Portal using their User-id and Password. After a successful login, the Bidder can access the FA module. The link would redirect the Auctioneer to the FA Dashboard, where s/he can create their category of auctions and configure auction parameters (such as start price, increments, time extension, etc.). Provide details of the items to be auctioned (e.g., metallic and non-metallic scrap). Set the auction start date, end date, and time. Specify auto-time extension options (limited or unlimited). Upload mandatory documents related to the auction (GTC and STC for the forward auction). Publish the auction listing. FA-SA may specify mandatory eligibility certificates (e.g., GST Certificate, proof of EMD, and a bid covering letter, as required) to be submitted by the Bidders online/ offline before the start of the auction.

c) **Participation by FA-BB**: FA-BB can log in to the GeM portal using the registered credentials. Navigate to the "Forward Auction" section. View ongoing auctions and select the relevant auction. Bidders can continuously

bid for the items they are interested in. Eventually, the highest Bidder wins the item. All successfully registered bidders must accept the terms and conditions and then pay the EMD amount (if applicable) to participate in the Live auctions.

d) **Earnest Money**: FA-BB may be asked to submit EMD when the item's estimated value exceeds Rs. 5,00,000/-. The maximum rate of EMD is generally 5% of the estimated value. The FA-BB must pay the EMD amount through the Payment gateways available on GeM. The EMD amount shall be available with the GeM until the intimation /Sale letter is generated. The H1 Bidder's EMD amount shall be auto-remitted within 2 days auction-wise in the auctioneer account after the generation of the sale intimation letter. The EMD of unsuccessful bidders shall be auto-refunded to their source account within 2 days after generating the sale intimation letter through GeM only. The entire remittance/refund details can be seen/downloaded in the auction dashboard.

e) **Sale Letter**: The FA-SA shall review the bids and award the auction to the highest Bidder. He shall issue an intimation letter/ sale letter to the successful Bidder. Primary users must update auction account details in their profile.

f) **Payment Conditions**:

i) Payment conditions vary based on the auction and contract terms. The payment schedule is specified in the contract. The exact mode of payment is mentioned in the auction terms. Bidders must make timely payments for the auctioned items.

ii) The balance sale value (arrived at after adjusting EMD from the actual sale value but including all applicable taxes) shall have to be paid by the successful Bidder within 10 (ten) days for the lot value up to INR 5,00,000 (Indian Rupees Five Lakh) and within 15 (fifteen) days for the lot value more than INR 5,00,000 (Indian Rupees Five Lakh) from the date of bid acceptance (unless other timelines are prescribed in STC / ATC). The balance sale value, including all taxes, if not paid within the prescribed time limits, shall be paid within such time limit as may be extended by the FA-SA, together with any Ground Rent / Charges as specified in the GTC. iii) In the event the Buyer fails to make the requisite payment within the time / extended time stipulated, the sale relating to such lot can be cancelled at the discretion of the FA-SA, and the EMD deposited by the Bidder shall be forfeited in full, and the FA-SA shall be entitled to recover any incidental / consequential loss suffered by it as a result of such failure.

iv) If in case of failing to deposit the Payment within the stipulated time, the Buyer can deposit the balance sale value with payment of interest

charges for the delays involving a maximum of up to 30 (thirty) days for lot value up to INR 5,00,000 (Indian Rupees Five Lakh) and maximum up to 40 (forty) days for lot value more than INR 5,00,000 (Indian Rupees Five Lakh) from the date of acceptance of bid, in exceptional circumstances with prior permission of the FA-SA. The rate of interest charged on delayed payment will be 7% above the "Base rate of State Bank of India" as prevailing on the last date of payment originally indicated in the Bid.

v) If the goods are not removed within the free time period prescribed by the FA-SA, it shall be entitled to recover from the purchaser the ground rent @ Rs 10/- per lot or part of a lot per day or part of a day, or 0.5 % of the value of the goods/ materials remaining undelivered per day or part of a day whichever is higher. Such ground rent or any other charges that the FA-SA may have incurred shall be recovered from the Buyer before the goods are delivered. If such materials are not removed on payment of ground rent within 30 (thirty) days from the expiry of the period as prescribed, then the FA-SA may, at his discretion, terminate the contract and order the resale of the goods and forfeit all the money paid by the Buyer in respect thereof without making any reference to the Buyer. The lot/materials shall be deemed to have been abandoned by the purchaser to all intents and purposes.

g) **After Sale Actions**: FA-SA must provide necessary certificates and documents as GeM requires. Provide a certificate of disposal for e-Waste items within 30 days after disposal. Keep records of auction proceedings, bids, and disposal certificates. The eWaste disposal should follow the Government guidelines currently in force. FA-SA must provide a certificate of disposal for e-Waste items within 30 days after receipt of the e-Waste.

h) For more details, please visit the GeM portal.

10.9. Disposal at scrap value or by other modes

If the Port is unable to sell any surplus or obsolete or unserviceable item at the reserve price, despite its attempts through an advertised tender or auction, it may dispose it off at its scrap value with the approval of the Competent Authority in consultation with the Finance. In case the Port is unable to sell the item even at its scrap value, it may adopt any other mode of disposal, including destruction of the item in an eco-friendly manner.

10.10. Delivery of Sold Material

10.10.1 Free Delivery Time and Ground Rent

Delivery must be taken within 30 (thirty) calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of

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

10.10.2 All Risks to the Buyer

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

10.10.3 Terms of Delivery

1. No picking, choosing, sorting, welding, cutting, or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut material and no other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the Port reserves the right to remove them at the time of delivery. The buyer shall not be entitled to re-sell an item, lot, or part of a lot while the goods are still lying within the premises of the Port and any such sale or assignment of the buyer's right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.
2. The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer's identity proof. If the successful bidder desires to authorise a representative or an agent to accept delivery, the bidder shall produce a suitable power of attorney or authorisation letter for each lot separately, duly attested, by a notary public authorising his representative or agent to lift the material from the Port.

10.10.4 Default by Port

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

10.10.5 Default by Buyer

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

10.10.6 Witnessing Delivery

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

1) Stock-holder's representative;
2) Accounts representative – stock-verifier;
3) Representative of the security force of a rank not less than constable
4) Representative of the purchaser (if he wants to be present).

10.10.7 Deliveries of Scrap

1. At the time of delivery of scrap material to the purchaser, the weighment is to be done in the presence of the stockholder's representative, so nominated by the Head of Office. The stockholder's representative and accounts representative will sign a joint statement indicating the type of scrap, name of the party to whom scrap is delivered and quantity as per the weighment slip. The stock-holder should arrange for the deliveries to be affected according to the agreement and terms and conditions of sale. He should take every possible step to expedite delivery of the auctioned materials. The stock verifier should count, measure, or weigh each lot or part of a lot after comparison of the description and quantity shown in the sold lot to ensure that only such kinds and quantities of materials as have been shown in the sold lot are being issued; he should sign the gate passes and issue notes in token of such a check. In giving delivery of scrap of non-ferrous items, the material should be weighed on electronic weighing scales and the weight of each consignment should be recorded in detail by the stock verifier in his field book. All deliveries in vehicles should be done through Electronic Weigh Bridges. All the Weigh Bridges should have valid certificate from Weight & Measurement Department of the State Government.

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

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

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

10.10.8 Variation in Available Quantity

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

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

10.10.9 Conclusion of Delivery

The Port's responsibility ends after the consignment has been loaded and handed over to the purchaser's representative. The Port will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots pertaining to the item of scrap, any stock left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted. Such "leftover" stock may be transferred to fresh scrap of a similar description. At the conclusion, a report of the sale account of goods disposed off must be submitted to the Competent Authority and Finance to show that only the material paid for (and

nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts. A format of the report is shown in Annexure 27

10.11. Procedure for Adjustment of Sale Proceeds

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

1. If the realised price is more than the book value, the sale proceeds should first be applied towards the 'head of account' in which the book value is lying, and the remaining portion should be treated as "profit on the sale of a capital asset;"
2. If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the Competent Authority's sanction to write off the difference between the book value and the realised price would be necessary.

KAMARAJAR PORT LIMITED

Manual for Procurement of Goods

ANNEXURES

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Annexure-GM/1

1 Hierarchy of Procurement Guidelines

(Refer Para 1.1-3)

Hierarchy Levels of Procurement Guidelines		
I – Statutory Framework	The Constitution of India	
	Mercantile Laws: Indian Contract Act, 1872 and the Sale of Goods Act, 1930; Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000	
	Laws specific to Public Procurement: Right To Information Act, 2005; The Micro, Small and Medium Enterprises Development Act, 2006; Prevention of Corruption Act, 1988; Lokpal and Lokayukta Act, 2013; Whistle Blowers' Protection Act, 2014; Code of Criminal Procedure[1] (CrPC), 1973, Central Vigilance Commission Act, 2003, Delhi Special Police Establishment Act, 1946 (DSPE) – CBI, Indian Penal Code[2] 1860	
II – Rules and Regulations	Delegation of Financial Power Rules General Financial Rules, 1987 (Amendment) 2022	General Financial Rules, 2017
	Any other orders and guidelines of the Government on the subject of Public Procurement regarding financial, vigilance, security, safety, counter-trade and other regulatory aspects	
III –MoF Manuals and Procuring Entities' Codes/ Manuals	Ministry of Finance's Manual for the Procurement of Goods/ Works/ Consultancy Services and Non-Consultancy Services	More Comprehensive and detailed Codes and Manuals for Public Procurement for various categories issued by 'Procuring Entities' for their use
IV – MoF MTDs and Procuring Entities' Tender Documents	Ministry of Finance's Model Tender Documents for Procurement of Goods/ Consultancy Services/ Non-Consultancy Services etc.	Procuring Entities' Tender Documents for Procurement of Goods/ Works/ Consultancy Services etc.

Remarks:

1. The documents at Hierarchy Levels I and II above are of fundamental and generic nature.
2. Documents at lower levels of the hierarchy must conform to the Documents higher up in the hierarchy.
3. Relationships of Bidders /Suppliers / contractors /service providers with procuring entities are solely governed by the law of the land and the relevant tender/ contract/ registration document(s). Other documents at hierarchy levels II and III mentioned above shall have no locus standi in such relationships.

[1] This law has been replaced by Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 from 1st July 2024

[2] This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024

Annexure-GM/2

2 Delegation of Financial Powers

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

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

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

Explanation: In this rule, the word "contract" includes miscellaneous contracts, such as handling contracts and leases. Leases for hiring accommodation for office, residential and other purposes shall, however, be regulated under item 16 of the Annexure to Schedule V. If a contract extends over a period, the total value over the entire period of currency shall be taken for the purpose of applying the limit. Further a limited or open tender which results in only one effective offer shall also be treated as a single tender contract." *(for the purpose of delegation of powers).*

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

Annexure-GM/3

3 Powers for Incurring Contingent Expenditure

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

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

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

Annexure-GM/4

4 Suggested Structure of Schedule of Procurement Powers

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

Description of item	Threshold value in Rupees Lakhs				
Competent Financial Authority > Level 1 is lowest and Level -5 is the highest	Levels				
	1	2	3	4	5
Indents initiation, approvals and Signing, including formulation of Technical Specifications					
Technical Approval					
Administrative, Budgetary Approval					
Initiation, Signing & Submission					
Approval and Signing of PAC					
Approval and Signing of Urgency Certificate for SLTE or acceptance of Single offer received against LTE					
Approval & Justification for STE without PAC					
Approval for Floating of Tenders of Various Types including					
Selection of Mode of Procurement and Biding System, Short-list of Bidders for LTE/ SLTE, Tender Documents Preparations, including parameters of MTD and variation there-from in AITB, SCC, Eligibility/ Pre-Qualification Criteria, Decisions of Bid Cost, EMD/ PBG; Quantity, Slicing/ Packaging of requirements; non-standard payment terms, Advance Payment, Stage Payments, Proforma invoice payment, Exchange Rate Variations, Price Variations Clauses, LC payments etc					
OTE/ LTE/ PAC tenders as per Norms					
STE without PAC Tender					
GTE Tenders					
Single Stage Two Envelope System					
Prequalification Tender Two Stage or Single Stage three Envelopes					
EoI Tenders					
Approval of Retendering of a discharged tender after the second attempt					
Competent Authority (CA) for Evaluation and Acceptance of Tenders					
Procurement without calling Quotation					
Procurement Through a Purchase Committee					
Direct Approval of Tenders Without Tender committee					
To accept Single Tender Purchase of Steel Items from Steel PSEs or Petroleum Products from Petroleum PSEs					

Tender Committee Composition and Competent Authority for Acceptance of TC Recommendations for various slabs of Estimated Tender Value. Normally there should be standing tender committees.					
Slab 1 (Rs 10 Lakh to 50 Lakh) – Level 2 officers' TC, Acceptance by Level 3 Officer					
Slab 2 (Rs 50 Lakh to 2 Crore) – Level 3Officers' TC acceptance by Level 4 Officer					
Slab 3 (Rs 2 Crore 25 Crore) – Level 4 officers' TC acceptance by Level 5 Officer					
Higher levels and other type of TC to suit local requirements, Acceptance at Sec level					
Approval of acceptance of Single Offer against GTE/ OTE/ LTE and acceptance of unsolicited Offers in LTE against urgency certificate by the indentor					
Formulation and Placement of Contracts					
Contracts after following Tendering Process					
Acceptance of Special Conditions with concurrence of Finance before Award of Contract as per recommendation of TC/ CA					
Acceptance of 100% Payment against Proforma Invoice					
Other Variations demanded by Bidders in special circumstances.					
Post Contract Powers, including Bill Passing and Payments, Handing over assets/ equipments/ material/ utilities to Contractor; Extensions with or without LD, or approvals of Variations, Contract Closure, Terminations, Arbitrator appointment, Accepting and sanctioning Court and Arbitration award					
Waiver of Liquidated Damages					
Allowing release of Time-barred claims					
Disposal of Scrap					
Approval of Declaration of Materials as Scrap, with and without formality of Survey Committee. (Includes nomination of Survey Committee)					
Decision of Mode of Procurement, Preparation of Catalogues for Auction and Tender Documents for Tenders					
Approval of Reserve Price Fixation. (Includes nomination of officers/ committee to decide the Reserve Price)					
Acceptance of Tender Committee Recommendation/ Conduct of Auctions (including acceptance of bids)					
Extension of period to deposit Balance Sale Value or Date of Delivery of Materials					

Annexure-GM/5

5 Purchase Requisition (Indent) for Goods (Non-stock)

(Refer Para 2.1. 1.2.3)

Name of Indenting Office_____
Purchase Requisition for Goods (Non-stock)
(Separate requisitions to be submitted for each trade group in duplicate)

PR No.		Date	
Dept.		Office	
Category of Stores / Trade group		Details of spares for equipment/assembly etc	
Date by which goods are required		Place of delivery and details of Consignee	
Detailed description of items			

S.No	Description/ specification / Drawings/ Sample	Unit	Past Consumption			Available stock if any	Total Qty indented	Estimated past Purchase rate	Last purchase reference	Total estimated cost
			Yr-3	Yr-2	Yr-1					

Estimate Name/Number	Allocation No.	Code No.
Is the proprietary certificate attached (if yes – Ref No.)		

It is certified that:

1. Description, technical specification, and quantity are in conformity with the guidelines in the Procurement Manual for Goods.
2. Technical and financial approvals at appropriate levels as per DFPR have been obtained.
3. Funds are provisioned for in the budget.
4. The quantity indented does not exceed any sales, consumption, or usage limits of requirements, if any laid down by competent authority.

Signatures of the Concerned Officer	Signature of Indenting Officer

Annexure-GM/6

6 Purchase Requisition Register for Indentors

(Refer Para 2.3)

Name of Indenting Office_____

Purchase Requisition (PR) Register for Indentors
(To be prepared and maintained by the indenting divisions)

Name of the Department to which PRs Sent _____

S.No	Description	Qty.	PR No. & Date	Date of Submission	Tender No. & Opening date	Contract Ref. / Date	Qty	Name of Supplier	Date of Delivery	Date of Receipt of material	Remarks

Officer Concerned

Indenting Officer

Annexure-GM/7

7 Purchase Requisition Register for Procuring Department

(Refer Para 2.3)

Name of Procuring Department_____

Purchase Requisition (PR) Register for Procuring Department
(To be prepared and maintained by the Procuring Department)

Date/S.No	Tender File No.	PR No. & Date	Description	Qty	Date of Receipt of PR	Indentor	Tender Type / Date of floating	Date of Tender Opening	Contract No. / Date	Supplier	Qty	Date of Delivery	S.No. of Contract Progress Register	Remarks

Concerned Officer

Procuring Officer

Note:

1) The register will be reviewed and signed by the Head of Office every month.
2) A summary will be prepared and submitted to HoD every quarter

Annexure-GM/8

8 Limited Tender Form

(Refer Para 4.8.1 to 4.8.5)

Name of Procuring Department_____

Firm's Reference			**Date**	
Firm Registration No. (if any)			**PAN (attach photocopy)**	
TIN/GST No.		***LIMITED TENDER FORM***	Address:	
Phone				
Fax				
Email				
M/s:		Enquiry No. and Date		
		Date of Tender Opening		

Please submit on or before 3:00 pm on the date of tender opening mentioned above, your quotation for the following goods, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top with – Enquiry No; Date of Tender Opening.
Yours Sincerely
Procuring Officer

Tender Schedule: All Rates in Figures and Words in Rupees

Sr No:	Description and Specification	Qty	Unit	Delivery Terms	Rate per Unit	Taxes & Duties	Packing/ forwarding	Total Rate per Unit	Total Value

Delivery Schedule:

Enclosed Specifications/Drawings/Special Conditions of Contract:

Item/Tender Specific Conditions of this Tender:

I/ we engage to supply the material(s) to your office and comply with the following:

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

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

TERMS AND CONDITIONS OF LIMITED TENDER

i) The quotation must be in the form furnished by the Port and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not, the quotation will not be considered. Quotation written in pencil will not be considered.

ii) Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the bidders or their representatives who may wish to be present.

iii) The Port reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.

iv) Participation in this tender is by invitation only and is limited to the selected Port's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of Port and apply for registration as per procedure. Note: to get registered as an approved supplier with the Port, please download supplier approval form from _____ and submit.

v) Manufacturer's name and country of origin of materials offered must be clearly specified. Please quote whether your organisation is large scale industry or small-scale industry. If you have UAM Certificate, please attach it to the quotation. Mention your registration details.

vi) Complete details and ISI (Indian Standards Institute) specification if any must accompany the quotation. Make/ brand of the item shall be stated wherever applicable. If you have got any counter offer as suitable to the material required by us, the same may be shown separately.

vii) Samples must be submitted where specified along with the quotations. Samples must be carefully packed, sealed and labelled clearly with enquiry number, subject, and sender's name for easy identification. Rejected samples will be returned at your cost if insisted. (Please note that calling for samples along with the bid, is strictly discouraged as per para 2.2.1 (x)).

viii) All drawings sketches and samples, if any, sent along with this enquiry must be returned along with quotations duly signed.

ix) All supplies are subject to inspection and approval before acceptance. Manufacturer/supplier warranty certificates and manufacturer/ Government approved lab test certificate shall be furnished along with the supply, wherever applicable.

x) The Port reserves the right to modify the quantity specified in this enquiry.

xi) The prices quoted should be firm till the supplies are completed. Please quote the rates in words and figures. Rates quoted should be free delivery at destination including all charges otherwise the quotation is likely to be rejected. Prices quoted for free delivery at destination will be given preference. If there is no indication regarding the FOR, in the quotation, then it will be considered as FOR destinations. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.

xii) Payment of sales tax is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding GST is recorded in the quotation, the GST will be considered as included.

xiii) Delivery period required for supplying the material should be invariably specified in the quotation.

xiv) In case your quotation is accepted, and order is placed on you, the supply against the order should be made within the period stipulated in the order. The Port reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to supply the material within the stipulated period shall entitle Port for the imposition Liquidated Damages without assigning any reasons @ 1/2% (half per cent) of the value of the delayed item, per week (or part thereof) of the delay, subject to a maximum of 5% (five per cent) of the total contract value, unless extension is obtained in writing from the office on valid ground before expiry of delivery period.

xv) If the deliveries are not maintained and due to that account Port is forced to buy the material at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting supplier.

xvi) Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.

Annexure-GM/9

9 Proprietary Article Certificate

(Refer Para 4.10)

Valid for the Current Financial year

File Number and Date Reference			
1	Description of article		
2	Forecast of quantity/annual requirement		
3	Approximate estimated value for the above quantity		
4	Maker's name and address		
5	Name(s) of authorised dealers/ stockists		
6	I approve the above purchase on a PAC basis and certify that: -- Note- Tick to retain only one out of 6(b) or 6(c), whichever is applicable and cross out others. Please confirm 6(a) by ticking it, without which the PAC certificate will be invalid.		
6(a)	This is the only firm that manufactures/ stocks this item. AND		
6(b)	No other make or model is acceptable for the following reasons (like OEM/ warranty spares):		
6(c)	A similar article is not manufactured/sold by any other firm, which could be used in lieu.		
7	Reference of concurrence of finance wing to the proposal:	_____	
The history of PAC purchases of this item for the past three years may be given below.			
Name of the Supplier			
Order/ Tender Reference& Date	Quantity Ordered	Basic Rate on Order (Rs.)	Adverse Performance Reported if Any

Signature of Approving Authority----------

Date ----------

Designation of Officer ----------

Annexure-GM/10

10 Purchase without Quotation Format

(Refer Para 4.12.1.1.)

Ref No:			
Place:		Date:	

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

Item:	
Quantity:	
Indentor:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/s	
Vide Bill No.:	
Justification:	
A cheque may be drawn in favour of	
Name:	
Designation:	
Signature:	

Annexure-GM/11

11 Purchase Committee Certificate Format

(Refer Para 4.13.1-5.)

Ref No:			
Place:		Date:	

"Certified that we, the undersigned, members of the purchase committee, are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate, and the supplier/contractor recommended is reliable and competent to supply the goods in question, and it is not debarred by any Port or Ministry/Department." The details of the recommended purchase are:

Item:	
Quantity	
Indentor	
Details of Prices Ascertained	

Bidder	Unit Rate	Taxes/Duties	Other Chgs	Total Unit Price	Total Price	Recommendations & Comments

Selected Quotation	
Bidder	
Unit Rate, Taxes/Duties/Other Charges	
Total Unit Rate	
Total Value of Purchase	
A Cheque may be drawn in favour of	

Signature	Signature	Signature
Name:1	Name:1	Name:1
Designation	Designation	Designation

Annexure-GM/12

12 Sample Pre-Qualification Criteria (PQC)

(Refer Para 4.6.1-4.)

1. **Criteria 1 – Experience and Past Performance:**
   a) The bidder *(manufacturer or principal of authorised representative – hereinafter referred simply as 'The Bidder')* should have regularly for at least the last ***[three[3]]*** years, ending 31st March (or any other year ending followed in relevant country) of the previous financial year *(hereinafter called 'The relevant Date')*, manufactured and supplied ***(/ erected/ commissioned)[4][Name of Requirement]***, with the same or higher specifications***[having/with – parameters[5]]****(hereinafter called 'The Product')*, and
   b) The bidder' should have manufactured and supplied ***(/ erected/ commissioned)*** at least ***[____[6]]***numbers *(hereinafter referred to as 'The Qualifying Quantity')* of 'The Product' in at least one of the last five years ending on 'The relevant Date', and out of which:
   c) (At least [one[7]] numbers of offered version/ model of 'The product' should be in successful operation for at least [two] years on the date of bid opening.)
2. **Criteria 2 - Capability- Equipment & Manufacturing Facilities:**
   a) 'The bidder' must have an annual capacity to manufacture and supply ***(/ erected/ commissioned)*** at least 'The Qualifying Quantity' (see criteria 1-a) above).

   Note: *In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in the case of Printing Paper of different specifications/ sizes, it shall be applicable to quantity of paper manufactured and supplied specification/ size wise.*
3. **Criteria 3 - Financial Standing – under all conditions**
   a) **Turn-over:** The average annual financial turnover of 'The bidder' during the last three years, ending on 'The relevant Date,' should be at **Rs. *[---------]* millions[8]** (or equivalent in foreign currency at exchange rate prevalent on 'The Relevant Date') as per the annual report (audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant/ Cost Accountant in India or equivalent in relevant countries.
   b) **Net-worth**: The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on 'The Relevant Date' and should have not eroded by more than ***30%*** (thirty per cent) in the last three years, ending on 'The Relevant Date'.

---

[3] Change number of years if needed.

[4] Add text within bracket in case of Plant and Machinery only and delete for others.

[5] Insert the defining parameters like Speed or defining technology here.

[6] Fix the quantity as 40 – 80 % or any other % of the quantity in the Tender Documents rounded upto next whole number. In case of uncommonly large quantity procurements, a lower percentage would ensure that otherwise capable suppliers do not get ruled out. In case of smaller procurements, a higher percentage would ensure that low capability vendors do not vitiate competition.

[7] Fill up a reasonable number. In a new technology product, the Manufacturer is not likely to meet the requirements number of products or of number of years' operating successfully; hence these can be reduced in such cases.

[8] Fix the value as 40 – 80 % or any other % of the estimated cost of the quantity in the Tender Document. Please note that Rs 1 Cr = Rs 10 million.

Note: *In case of Indian Bidders/ companies (manufacturer or principal of authorised representative) who have been restructured by Banks in India, under the statutory guidelines, they would be deemed to have qualified the Financial standing criteria considering the institutional financial backing available to them.*

4. **Applicability in Special Cases:**

a) **Relaxation to Startups:** The Port reserves its right to relax the condition of prior turnover and prior experience for start-up enterprises recognized by Department for Industry & Internal Trade (DPIIT), subject to meeting of quality & technical specifications. Startups may be MSMEs or otherwise. The decision of the Port in this regard shall be final.

b) **Applicability to 'Make in India':** Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing 'Make in India' agreement/ program and who, while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:

i) Their foreign 'Make-in-India' associates meet all the criteria above without exemption, and

ii) the Bidder submits appropriate documentary proof for a valid/ approved ongoing 'Make in India' agreement/ program.

iii) The bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of 'The Product' offered, including all warranty obligations as per the general and special conditions of contract.

c) **Authorized Representatives:** Bids of bidders quoting as authorised representatives of a principal manufacturer would also be considered to be qualified, provided:

i) their principal manufacturer meets all the criteria above without exemption, and

ii) the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of the contract;

iii) the bidder himself should have been associated, as the authorised representative of the same or other Principal Manufacturer for the same set of services as in the present bid (supply, installation, satisfactory commissioning, after-sales service as the case may be) for the same or similar 'Product' for past three years ending on 'The Relevant Date.'

d) **For Existing successful Past Suppliers**: In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of 'The Product' in at least one of the recent past *[three]* procurements, who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the maximum quantity supplied by him in such recent past.

e) **Joint Ventures**: Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria independently.

f) **Holding Companies:** Credentials of the Holding company cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each subsidiary bidding company must comply with all the PQC criteria independently. However, the Financial Standing credentials of a domestic Holding Company can be clubbed with only one of its fully owned subsidiary bidding companies, with appropriate legal documents proving such ownership.

g) Indian Subsidiaries of Foreign Principals/ Parent company cannot claim the technical and financial credentials of their principals/ parent or group companies/ allied firms (without the minimum percentage participation in JV) for fulfilling qualification criteria.

h) [9]The Port may, in suitable cases, permit the demerged entities (by virtue of a corporate restructuring exercise, etc.) to use the credentials of the original/parent entity to satisfy the eligibility criteria in the tenders, at least for an initial five years from the incorporation of the demerged entities based on the merit and circumstances of the cases (e.g., type of procurement, nature of demerger, number of eligible bidders available etc.). Tender documents must clearly mention if the credentials of the demerged entity will be considered or not in the specific tender and specify the conditions under which demerged entities may become eligible.

5. NOTE FOR BIDDERS:

a) **Doctrine of Substantial Compliance'**: The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract to ensure best value for money from expenditure of Public Money. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by Port would be based on common usage of terminologies and phrases in public procurement in accordance with the 'Doctrine of Substantial Compliance' and would be final.

b) Along with all the necessary documents/ certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.

c) Supporting documents submitted by the bidder must be certified as follows:

i) All copies of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.

ii) The list of supporting documents to be submitted is as follows:

[----------Port shall specify]

iii) All financial standing data should be certified by certified accountants, for example, Chartered Accountants/ Cost Accountants or equivalent in relevant countries; and Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.

Note for Purchaser

Portions in italics are for your decision/ guidance; these are not to be printed in the tender documents. Portion within [ ] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the tender documents.

[9] Notified vide OM No. F .8/78/2023-PPD issued by Department of Expenditure dated 12.10.2023

Annexure-GM/13

13 Bid Opening Attendance Sheet cum Report

(Refer to para 5.3.3.a)

KAMARAJAR PORT LIMITED

Bid Opening Attendance Sheet

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

Title of Tender:_____

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

Signature of the Authorized representative of the Port

Bid Opening Report

Tender No._____ **Title** _____

Date of Opening _____ **Total Number of tenders received** _____

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

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

Annexure-GM/14

14 Tender Committee Report Format

(Refer to para 7.4.1-6 and 7.6.14-1)

(For Techno-Commercial/Financial Bids)

KAMARAJAR PORT LIMITED

Tender No._____ Description _____

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

Estimated cost _____ Bid Validity _____

Tender Opening date _____ Total Number of tenders received _____

Past Procurements

S.No	Supplier	Order Ref.No & Date	Qty	Basic Rate (Rs)	Remarks

Members of the Tender Evaluation Committee:

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

I. Salient features of the Tender

a) Review the background of indent, technical and financial approvals, estimated cost, budgetary provisions, the urgency of the requirement, special technical requirements and other connected procurements that are part of the same package/project.

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

c) Review special conditions restrictions, if any, on the participation of bidders, purchase preferences, and requirements prescribed in tender documents (EMD, document submission, etc.)

II. Preliminary Evaluation of Responsiveness

a) Review handling of any complaints received

b) Review/confirmation of quantity and period of delivery required

c) Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications.

III. Evaluation of Responsive Bids:

Bid-wise deliberation should be recorded.
In case of evaluation of Financial Bids

i) Start with a review of techno-commercial evaluation.
ii) Insert a summary table of evaluated prices in the order of L1, L2, etc.
iii) Deliberations should be in the sequence of L1, L2, etc.

IV. Summary of Recommendations

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

a) Comment whether level of competition is considered to be adequate or not. If not, mention the mitigating actions.

b) Give a summary of recommended bids, award value, bid expiry date and special conditions, if any;

c) Also mention that the rates recommended are considered reasonable (and basis for such determination);

d) Total value of the recommendations for determining level of acceptance authority;

e) Mention that none of the TC members have any conflict of interest with the parties recommended for award;

f) Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.

Signature Name and Designation of the Members

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

Remarks by the Accepting Authority:

Signature

Name & Designation of Accepting Authority

Date of Acceptance:

Annexure-GM/15

15 Invitation and Declaration for Negotiations

(Refer to para 7.6.9-6-(b),(c))

Invitation for Negotiations

(On letterhead of the Port)

No: _____ Dt: _____

To M/s_____ Registered A/D

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

Dear Sir,

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

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

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

Enclosure:

i) Form of Declaration

ii) Form of Revised Offer

Yours faithfully,

(Authorised Officer)

FORM OF DECLARATION

(To be signed and submitted before the start of negotiations)

(On company letterhead)

No: _____ Dt: _____

To _____

Sub: Tender No ---------- Opened on ----------for the supply of ---------- Ref:

Your invitation for negotiations No: dated:

Dear Sir,

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

Place:_____

Date:_____

Yours faithfully,

Signatures of the bidder

or officer authorised to sign the bid On behalf of the bidder

Annexure-GM/16

16 Format of Revised Offer in Negotiations

(Refer to para 7.6.9-6d)

Revised offer in Negotiations

(On letterhead of the company)

From.....

Full address..... .....

To .....

Sir,

Sub: Tender No ---------- opened on ----------for the supply of ---------- Ref:
Your invitation for negotiations no: dated:

1. On further discussions with your representatives on .....in response to your letter no ..... dated .....

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

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original tender document remain valid and binding on me.
3. I/we undertake to execute the contract as per the following Schedule.....
4. I/we agree to abide by this tender on the revised rate quoted by me/us; it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to ..... and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid bidders shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

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

Annexure-GM/17

17 Letter of Award

(Refer to para 7.7.1.1.)

(On letterhead of the Port)

Letter of Award of Contract

Confidential

Contract No: _____ Date_____

To,
M/s. _____

Sub: Award of contract for contract no: _____ and contract title: _____
Ref: Your offer no. _____against our tender no._____opened on _____

Dear Sir/ Madam

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

You/your authorised representative(s) are requested to be personally present at [insert address] to sign the contract by _____.

In this respect, we also request you to submit the performance security of Rs._____by _____ Security deposit being --% (-- per cent) of the total cost = Rs. _____. Please apply for a refund of EMD deposited over and above the SD, if any.

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

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

Yours truly,

Enclosure: Agreement Form along with the delivery schedule [Authorised Officer]

Annexure-GM/18

18 Example of Formula for Price Variation Clause

(Refer to para 6.7.5.d-x)

(The formula for price variation should ordinarily include a fixed element and input elements (material / labour, other inputs e.g., fuel etc. may also be added, if relevant). The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five per cent). The portion of the price represented by fixed element includes fixed costs and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation in proportion to their relative share in total cost.)

The formula for price variation will thus be:-

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

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.
P_o is the contract price assumed to be price prevailing on the base date (date of last deadline for submission of bids) but is based on indices prevailing on dates prior to this date as explained in L_0 and M_0 below.
F is the weightage of fixed element not subject to price variation, as a percentage of the total price. a is the weightage of the material element, as a percentage of the total price. b is the weightage of the labour element, as a percentage of the total price.
F, a, and b being percentages should total 100. It is important that these weightages (especially of elements (e.g., fuel, which are known to only become costlier) should match the actual content of Goods, otherwise PVC may result in excessive profit or loss to the bidder.
L_o and L_1 are the average wage indices for the quarter before the respective quarters in which base date and date of supply falls; respectively. For example, for a tender with deadline of submission on March 17, 2022, and date of supply is September 15, 2022, L_o would be average wage index for the quarter of Oct-Dec 2021 and L_1 would be average wage index for the quarter of Apr-Jun 2022.
[10]M_o and M_1 are the material prices/indices as average of the month, specified number of months (time lag – say two months) prior to the month in which base date falls and average of the month, two months prior to the month in which date of supply falls, respectively. For example, for a tender with deadline of submission on March 17, 2022, and date of supply is September 15, 2022, M_o would be prices/index as average of the month of January 2012 and M_1 would be prices/index as average of the month of July 2022. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes, and duties and Octroi.

[10] Only materials directly used in manufacture should be included in PVC. Other materials used in running of production machines or factory (indirect materials) should not be included.

If more than one major item of material is involved, the material element can be broken up into two or three components such as M_x, M_y, M_z.

The following conditions would be applicable to price adjustment:

1. There is a Time-lag period between the date of supply/ base date respectively and the dates on which indices/ prices are to be considered as per above formula. This time lag can be a few months/ weeks prior to such base date/ date of supply, depending on the frequency of publishing/ availability of indices/ prices and the supply chain process of manufacturing. This must be specified in the definitions of L_0/ L_1 and M_0/M_1 indices in the formula in the tender document as above.
2. Base date shall be assumed to be the date of last deadline of submission of bids.
3. No price increase is allowed beyond original delivery period.
4. No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
5. No price adjustment shall be payable if this is less than or equal to 2% (two per cent) of Po.
6. The total adjustment will be subject to a maximum ceiling of ____% (to be specified in the tender document), beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of the contract.
7. Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bills should be submitted only quarterly for the supplies made during the quarter.
8. In GTE tenders, extra care should be taken when selecting the price indices. Preferably, the price indices should be from the same country and of the same currency as the country and currency of the bidder. In case, the price is in the currency of a country where inflation is low, and the indices are from a country with much higher inflation rates, (M_1/M_0) and (L_1/L_0) should be multiplied by a correction factor of exchange rates (E_0/E_1), where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in $, then E_o is Number of Rs. in a $ on base date and E_1 is the exchange rate on determination date.
9. Even if there is no price adjustment claim, the supplier must submit all relevant data to prove that there is no downward variation. In any case, he must submit a declaration as follows; *"It is certified that there has been no decrease in the price because of decrease in price variation indices in the price variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify this to the purchaser, and we undertake to refund and agree to the purchaser deducting any excess payment made to us in this regard, from our future payment due."*

Annexure-GM/19

19 Incoterms 2020

(Refer to para 6.9.3)

More Common Terms in Incoterms:

TERM SERVICE	EXW	FCA	FAS	FOB	CFR	CIF	CPT	DAP	DDP
	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading at Origin	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Inland Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Port Receiving charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Forwarders fee	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Ocean carrier	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Ocean/Air freight chgs	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Insurance Chgs for transit risk of the buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller
Charges at foreign port/ airport	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Customs duties & taxes abroad	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Delivery chgs to the final destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller

Annexure-GM/20

20 Progress of Supply Order Register

(Refer to para 9.7.4.1)

Sr.No.	Supply Order No. and Date	Brief Description of Material	Name of the Supplier / Regn No.	Quantity	Due date of delivery	Quantity	Actual Date of Delivery	Was the delay attributable to the supplier or the Port	Is Penalty imposed or not?	Status of Security Deposit	Remarks
1	2	3	4	5	6	7	8	9	10	11	12

Concerned Officer Procuring Officer

Note:

1. The Register will be reviewed and signed by the Head of office every month.
2. A summary will be prepared and submitted to HoD every quarterly.

Annexure-GM/21

21 Proposal for Extension of Delivery Period

(Refer to para 9.3.4.1)

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

Remarks of Indentor:

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

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

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

The proposed extension in delivery is recommended in accordance with the above remarks.

Signature of Indenting Officer and Date

Proposal by Procuring Officer

It is certified that:

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

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

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

Signature of Procuring Officer and Date

Head of Office recommendations/approval

Signature of the concerned officer/date.

Annexure-GM/22

22 Format for Extension of Delivery Period / Performance Notice

(Refer to para 9.3.4.4, 9.3.5, 9.6.7)

KAMARAJAR PORT LIMITED

To M/s _____

_____

Sub: Contract No ---------- dated ----------for the supply of ----------
Ref: Your letter no. ---------- dated: ----------

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply, you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date)
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally refixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following **Denial Clause:**

   a) That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, Sales Tax, GST or on account of any other taxes/duty, including customs duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.

   b) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.

c) Nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, GST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the date mentioned above namely (insert the original delivery date)

5. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.

6. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of

KAMARAJAR PORT LIMITED

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

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

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

Annexure-GM/23

23 Letter to Supplier after Expiry of Delivery Date

(Ref Para 9.3.4-3)

Model Format for Correspondence with Supplier after Expiry of Delivery Date

Registered Acknowledgement Due

To

M/s _____

_____

Sub: Contract No..... dated ..... for supply of .....

Dear Sirs,

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

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

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of

KAMARAJAR PORT LIMITED

Annexure-GM/24

24 No Claim Certificate

(On Contractor Letterhead)

To,
(Contract Executing Officer)

Kamarajar Port Limited

_____

Sub: No Claim Certificate
Ref : Contract Agreement no. ------dated ----------for Construction of ----------

Dear sir

With reference to the above referred contract, we have received the sum of Rs. _____ (Rupees _____ only) in full and final settlement of all the payments due to us for the performance of Services of ---------- under the above-mentioned contract agreement, between us and KPL. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against the KPL, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Date_____

Place_____

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

Annexure-GM/25

25 Goods Receipt and Inspection Report

(Refer to para 9.6.6.1)

Purchase OrderNo.		RR/GC No. & Date	
Name of Supplier		Date of clearance from Transporter	
Indentor		Date of Inspection/ Rejection	
Materials procured for Project/Scheme		Earlier GRIR No. for part supply	
Allocation		Code No	

Goods Receipt and Inspection Report

Goods Accepted / Rejected	
Part Qty or Full Qty	
GRIR No.	
Date	

Nos.	Description of Materials	Code No.	Invoice No.	Quantity as per SO	Qty Received	Qty Inspected/Accepted	Qty Inspected/ Rejected	Rate per Unit (Rs.)	Amount (Rs)	Taxes / Duties	Packing / Forwarding	Total Amount (Rs)

Copy to	Reason for not accepting the material	
GMF		
Indenting Officer	Inspected by me	Received above material of correct Qty and Quality
Procuring Officer	Signature_____	Signature_____
Book Keeping		Indenting/Receiving Officer
Inspecting Officer	Inspecting Officer	(Not below the rank of Supervisor)

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

Annexure-GM/26

26 Survey Committee's Report

(Refer to para 10.3.2-c)

Name of the Organisation _____

SURVEY COMMITTEE REPORT

Report Reference No._____	Date _____

			Quantity		Book Value			Total					
S.No	Code No.	Description of stores	Nos	Weight	Rate	Unit	Amount	Estimated Scrap Value	Estimated Loss	User Department	Reason of Survey	Recommendation of Survey Committee	Remarks of Competent Authority
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Signature	Signature	Signature
Committee member/Designation	Committee member/Designation	Committee member/Designation

Date: _____

Place: _____

Signature of the Competent Authority

Annexure-GM/27

27 Sale Account for Goods Disposed

(Refer to para 10.10.9)

Name of the Organisation _____

SALE ACCOUNT FOR GOODS DISPOSED

1	2	3	4	5	6
Lot No	Particulars of Stores	Qty/Weight	Name & Full address of Purchaser	Highest bid accepted (Name of bidder and bid value	Amount and Date Earnest Money/ Security Deposit Realised

7	8	9	10	11	12
Amount & Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof	The Actual Date of Handing over of the Articles with Quantities with reference to Issue Notes and Gate pass	Signatures of the Purchaser	eAuction Service Provider's Commission and Acknowledge-ment for its Payment	Book Value	Profit/ Loss w.r.t Book Value

Signature	Signature	Signature
Auction Disposal Officer	Accounts Representative	Security Staff

Annexure-GM/28

28 FAQs About PPP-MII Order, 2017

(Refer to para 10.10.9)

Question 1. How to calculate Local Content?

Answer: *Para 2 of the* PPP-MII Order, 2017 (as amended on 16.09.2020) defines local content as

Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent. Mathematically,

Local content = (Sale price - Value of imported content) * 100/ Sale price

Where, "Sale price" means price excluding net domestic indirect taxes and "Value of imported content" means price of imported content inclusive of all customs duties

Question 2. How to calculate Local Content in bids involving supply of multiple items from single bidder?

Answer: In case of bids requiring supply of multiple items (say "X_1", "X_2" and "X_3") by a single bidder, the local content in the bid shall be

Local content = ((Sale price of "X_1" - Value of imported content in "X_1") + (Sale price of "X_2" - Value of imported content in "X_2") + (Sale price of "X_3" - Value of imported content in "X_3")) * 100/ (Sale price of "X_1" + Sale price of "X_2" + Sale price of "X_3")

Question 3. How to obtain Make in India "MII" certificate?

Answer: No such certificate issued by Government of India. As per para 9 (a) of PPP-MII Order, 2017 (as amended on 16.09.2020), the bidders are required to self certify the local content in their product for purchase value less than Rs.10 crore. For purchases more than Rs.10 crore, as per para 9 (b) of PPP-MII Order, 2017, a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) is required to be submitted.

Question 4. What is the meaning of class-I local supplier, class-II local supplier and non-local supplier?
Answer: PPP-MII Order, 2017 (as amended on 16.09.2020) classifies the suppliers into following 3 categories:

a) 'Class-I local supplier' – Suppliers offering items with equal to or more than 50% local content
b) 'Class-II local supplier' - Suppliers offering items with equal to or more than 20% but less than 50% local content
c) 'Non-local supplier' - Suppliers offering items with Less than 20% local content

Nodal Ministries/ Departments are authorized to notify a higher minimum local content requirement for any item, i.e., higher than 50/20%, if they deem fit.

Question 5. Details of product categories for which nodal Ministry have been notified by DPIIT for PPPMII, Order 2017 may be provided?

Answer: DPIIT has notified 20 nodal Ministries for different product categories. The details of such product categories and associated Ministry/ Department are available on DPIIT website. Refer link:

https://dpiit.gov.in/sites/default/files/Approved%20product%20category%20list%20as%20per%2012th%20SCM.pdf

Question 6. Can an item be procured from non-local suppliers, if there are no Class-I/ Class-II local suppliers in the country.

Answer: Non-local suppliers can only participate in global tender enquiry. Against domestic/ national tenders, only Class-I and Class-II local suppliers can participate in the bidding process. Hence, in case item is not available locally from Class-I/ Class-II local suppliers, global tender enquiry may be floated for procuring item after taking approval of competent authority, as notified by Department of Expenditure under Rule 161(iv) of GFR.

Question 7. Are provisions of PPP-MII Order applicable only in procurement of the items for which nodal Ministries have been notified and the items for which nodal ministries have issued local content notification?

Answer: No. The provisions of PPP-MII Order are applicable on procurement of all the items by Central Government procurement entities. For the items, for which nodal ministries have not been designated Annexure 28: FAQs About PPP-MII Order, 2017 and the items for which nodal ministries have not issued minimum local content notification, the default provision of PPP- MII Order shall apply.

Question 8. Will the cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will be considered as a part of local content?

Answer: The cost of transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. will not be taken into account for calculating local content in any item. DPIIT OM No.P-45021/102/2019-BE-II- Part(1) (E-50310) dated 04.03.2021 refers, available on DPIIT Website. Refer link https://dpiit.gov.in/sites/default/files/ Letter%20to%20All%20 Ministries030420 21_clarification.pdf

Question 9. Can administrative Ministries grant exemption/ relaxation for procurement of imported items with the approval of Hon'ble Minister In-charge under Para 14 of PPP-MII Order?

Answer: Procurement of imported item is governed by Rule 161 (iv) of GFR. Hon'ble Minister In-charge of administrative Ministry is not the appropriate authority for any exemption/waiver in GFR. As such, procuring entities are advised to follow the procedures as prescribed in GFR Rule 161 (iv) for procurement of imported items. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 10. Can administrative Ministry/Departments give exemption for wide range of product categories for an extended period of time under Para 14 of PPP- MII Order with the approval of Hon'ble Minister In- charge?

Answer: The administrative Ministries/ Departments shall grant only tender specific exemptions under Para 14 of the Order. Exemptions granted shall remain valid for a period of maximum 01 year only. If

the same items are procured again within the aforesaid period of 01year, fresh approval of Minister-incharge is not required. If any administrative Ministry/ Department intends to grant exemption beyond a period of 01 year, it shall do so only with prior written concurrence of concerned nodal Ministry. In this regard, minutes of 14th Standing Committee Meeting held on 20.09.2022 issued by DPIIT, refers. (Agenda point Number 5.)

Question 11. How do I apply for DPIIT registration under Rule 144 (xi) GFR for entities having beneficial ownership in land border sharing countries?

Answer: The application format for registration of bidders under Rule 144 (xi) GFR is available on DPIIT website. Refer link: https://dpiit.gov.in/sites/default/files/Revised-Format-Bidders-31March2021.pdf. Applicants are required to submit one hard copy in the prescribed format along with soft copy (pdf), as detailed in the covering letter of the format. The applicant shall be asked to submit additional hard copies, if required at the later stage.

Question 12. What will be the category of the local suppliers having exactly 20% and 50% local content?

Answer: Vide its para 5, the Public Procurement (Preference to Make in India) Order, 2017 dated 16.09.2020 stipulates the minimum local content requirement as under:

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

Accordingly, the local suppliers having exactly 20% and 50% local content will be categorized as "ClassII Local Supplier" and 'Class-I Local Supplier' respectively.

Question 13. Whether a Central Government/CPSE Buyer can take cognizance of open undertakings/ futuristic declarations and treat bidder as Class I/ Class II local supplier through the present level of local content of the bidder happens to be below 50%/ 20% respectively?

Answer*:* Detailed Procedure for Verification of local content declared by suppliers /vendors is elaborated on clause 9 of PPP-MII Order, 2017 dated 16.09.2020 and as per the Order, futuristic declarations regarding local content is not allowed.

Annexure-GM/29

29 List of Medicines Reserved for Procurement from Pharma CPSEs

(Refer para 1.11.1-2-b)viii))

Not Applicable to KPL

Annexure-GM/30

30 Integrity Pact Format

(Refer para 3.3-2)

INTEGRITY PACT

Between

M/s.Kamarajar Port Limited hereinafter referred to as **"The Principal,"** and _____ hereinafter referred to as **"The Bidder/ Contractor."**

Preamble

The Principal intends to award contract/s for_____, under laid down organizational procedures. The Principal values full compliance with all relevant laws of the land, rules, regulations, economical use of resources, and fairness / transparency in its relations with its Bidder(s) and / or Contractor(s).

To achieve these goals, the Principal shall appoint Independent External Monitors (IEMs) who shall monitor the tender process and the execution of the contract for compliance with the abovementioned principles.

Section 1 – Commitments of the Principal

1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

   a) No employee of the Principal, personally or through family members, shall in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

   b) The Principal shall treat all Bidder(s) with equity and reason during the tender process. The Principal shall, in particular, before and during the tender process, provide to all Bidder(s) the same information and shall not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in the tender process or the contract execution.

   c) The Principal shall exclude from the process all known persons having conflict of interest.

2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal shall inform the Chief Vigilance Officer and in addition shall initiate disciplinary proceedings.

Section 2 – Commitments of the Bidder(s)/ Contractor(s)

1) The Bidder(s)/ Contractor(s) commits themselves to take all measures necessary to prevent corruption. The Bidder(s)/ Contractor(s) commits themselves to observe the following principles during participation in the tender process and the contract execution.

   a) The Bidder(s)/ Contractor(s) shall not, directly or through any other person or firm, offer, promise, or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which they are not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or the execution of the contract.

   b) The Bidder(s)/ Contractor(s) shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal, in violation of the Competition Act, 2002 (as amended from time to time). This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the tender process.

   c) The Bidder(s)/ Contractor(s) shall not commit any offence under the relevant IPC/PC Act; further, the Bidder(s)/ Contractor(s) shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals, and business details, including information contained or transmitted electronically.

   d) The Bidder(s)/Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details, as mentioned in the "Guidelines on Indian Agents of Foreign Suppliers," shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines, all the payments made to the Indian agent/representative must be in Indian Rupees only. Copy of the "Guidelines on Indian Agents of Foreign Suppliers" is placed on Annex hereto.

   e) he Bidder(s)/ Contractor(s) shall, when presenting their bid, disclose any and all payments made, is committed to, or intends to make to agents, brokers, or any other intermediaries in connection with the award of the contract.

   f) Bidder(s) /Contractor(s) who have signed the Integrity Pact shall not approach the Courts while representing the matter to IEMs and shall wait for their decision.

2) The Bidder(s)/ Contractor(s) shall not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3 - Disqualification from the tender process and exclusion from future contracts

If the Bidder(s)/Contractor(s), before award or during execution, has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the

tender process or take action as per laid down procedure to debar the Bidder(s)/Contractor(s) from participating in the future procurement processes of the Government of India.

Section 4 – Compensation for Damages

1) If the Principal has disqualified the Bidder(s) from the tender process before the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/ Bid Security.

2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous transgression

1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

2) If the Bidder makes an incorrect statement on this subject, the Principal shall act like para 2) of Section 4 above.

Section 6 – Equal treatment of all Bidders / Contractors / Subcontractors

In the case of Sub-contracting, the Principal Contractor shall take responsibility for adopting the Integrity Pact by the Sub-contractor.

a) The Principal shall enter into agreements with identical conditions as this one with all Bidders and Contractors.

b) The Principal shall disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s) / Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of the conduct of a Bidder, Contractor, or Subcontractor, or of an employee or a representative or an allied firm of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal shall inform the same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor

1) The Principal shall appoint competent and credible Independent External Monitor(s) for this Pact after approval by the Central Vigilance Commission. The task of the Monitor is to review, independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.

2) The Monitor is not subject to instructions by the parties' representatives and performs their functions neutrally and independently. The Monitor would have access to all Contract documents whenever required. It shall be obligatory for them to treat the information and

documents of the Bidders/Contractors as confidential. They report to the Management of the Principal.

3) The Bidder(s)/Contractor(s) accepts that the Monitor has the right to access without restriction, all Project documentation of the Principal, including that provided by the Contractor. Upon their request and demonstration of a valid interest, the Contractor shall also grant the Monitor unrestricted and unconditional access to their project documentation. The same applies to Subcontractors.

4) The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/ Sub-contractor(s) with confidentiality. The Monitor has also signed declarations on 'Non-Disclosure of Confidential Information' and 'Absence of Conflict of Interest.' In case of any conflict of interest arising later, the IEM shall inform the Management of the Principal and recuse themselves from that case.

5) The Principal shall provide the Monitor with sufficient information about all meetings among the parties related to the Project, provided such meetings could impact the contractual relations between the Principal and the Contractor. The parties offer the Monitor the option to participate in such meetings.

6) As soon as the Monitor notices, or believes to notice, a violation of this agreement, they shall inform the Management of the Principal and request the Management to discontinue or take corrective action or other relevant action. The Monitor can, in this regard, submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action, or tolerate action.

7) The Monitor shall submit a written report to the Management of the Principal, within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

8) If the Monitor has reported to the Management of the Principal a substantiated suspicion of an offence under the relevant IPC/ PC Act, and the Management of the Principal has not, within the reasonable time, taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

9) The word **'Monitor'** would include both singular and plural.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders, 6 months after the contract has been awarded. Any violation of the same would entail disqualifying the bidders and exclusion from future business dealings.

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

Section 10 – Other provisions

1) This agreement is subject to Indian Law. The place of performance and jurisdiction is the place from where the Tender/ Contract is issued.
2) Changes, supplements, and termination notices must be submitted in writing. Side agreements have not been made.
3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties shall strive to come to an agreement according to their original intentions.
5) Issues like Warranty / Guarantee, etc., shall be outside the purview of IEMs.
6) In the event of any contradiction between the Integrity Pact and its Annex, the Clause in the Integrity Pact shall prevail.

(For & On behalf of the Principal)	(For and on behalf of Bidder/ Contractor)
(Office Seal)	(Office Seal)
Place ----------	
Date ----------	
Witness 1: _____	Witness 1: _____
(Name & Address	(Name & Address

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

(Refer Section 2-d) of Annexure 30)

1.1 There shall be compulsory registration of agents for all Global Tender Enquiries (GTE) and Limited Tender Enquiries (LTE). An agent not registered with the Port shall apply for registration with them.

1.2 Registered agents shall file an authenticated Photostat copy duly attested by a Notary Public/Original certificate of the Principal confirming the agency agreement and giving the status being enjoyed by the agent and the commission/remuneration/salary/ retainer ship being paid by the Principal to the agent before the placement of an order by the Port.

1.3 Wherever the Indian representatives have communicated on behalf of their principals and the foreign parties, have stated that they are not paying any commission to the Indian agents, and the Indian representative is working based on salary or as a retainer, a written declaration to this effect should be submitted by the party (i.e., Principal) before finalising the Contract.

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

2.1 Bidders of Foreign nationality shall furnish the following details in their offer:

2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorisation and authority given to commit the Principals. If the agent/representative is a foreign Company, it shall be confirmed whether it is a real functioning Company, and details of the same shall be furnished.

2.1.2 The amount of commission/remuneration included in the quoted price(s) for such agents/representatives in India.

2.1.3 Confirmation of the Bidder that the commission/ remuneration, if any, payable to his agents/representatives in India, may be paid by the Port in Indian Rupees only.

2.2 Bidders of Indian Nationality shall furnish the following details in their offers:

2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e., whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorising the agent to make an offer in India in response to tender either directly or through the agents/representatives.

2.2.2 The amount of commission/remuneration included in the price (s) quoted by the Bidder for himself.

2.2.3 Confirmation of the foreign principals of the Bidder that the commission/remuneration, if any, reserved for the Bidder in the quoted price (s) may be paid by the Port in India in equivalent Indian Rupees on satisfactory completion of the Project or supplies of Stores and Spares in case of operation items.

2.3 In either case, in the event of the contract materialising, the payment terms shall provide for payment of the commission /remuneration, if any, payable to the agents/representatives in India in Indian Rupees on expiry of 90 days after the discharge of the obligations under the contract.

2.4 Failure to furnish correct and detailed information as called for in paragraph - 2.0 above shall render the concerned bid liable to rejection or, in the event of a contract materialising, the same liable to termination by the Port. Besides this, there would be a penalty of banning business dealings with the Port or damage or payment of a named sum.

Annex-2 to Integrity Pact – Extract of Standard Operating Procedure

(Refer Para 3.3.-3)

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

   a) Promise on the part of the Port to treat all bidders with equity and reason and not to seek or accept any benefit that is not legally available;

   b) Promise on the part of bidders not to offer any benefit to the employees of the Port not available legally;

   c) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;

   d) Promise on the part of Bidders not to pass any information provided by Principal as part of business relationship to others and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code (IPC) 1860; (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024)

   e) Foreign bidders are to disclose the name and address of agents and representatives in India, and Indian Bidders are to disclose their foreign principals or allied firms;

   f) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;

   g) Bidders are to disclose any transgressions with any other public/ government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which the competent authority took cognizance of the said transgression. The period for which such transgression(s) is/ are to be reported by the bidders shall be the last three years to be reckoned from the date of bid submission. The transgression(s) for which cognizance was taken even before the specified period of three years but is pending conclusion shall also be reported by the bidders. (Please refer to para 3.2-1-b) of the Goods Manual).;

   h) Any violation of the Integrity Pact would be considered as a violation of the Code of Integrity (para 3.21 of the Goods Manual) and would entail punitive provisions thereof (para 3.2-2 of the Goods Manual) including disqualification of the bidders and exclusion from future business dealings, as per the of GFR, 2017, PC Act, 1988 and other Financial Rules/ Guidelines, etc., as may be applicable to the organization concerned;

2. The integrity Pact would be implemented through a panel of Independent External Monitors (IEMs).

3. All organisations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and ensure its effective implementation. The final responsibility for implementing Integrity Pact vests with the Head of organisation/CMD/CEO. The Procurement wing of the organisation would be the focal point for the implementation of the Integrity Pact.

4. The provision for the Integrity Pact (as per Annexure 30) is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements that meet the criteria laid down in Para 3.3-2 of the Goods Manual.

5. In all tenders covered under the Integrity Pact, the particulars of all IEMs, including their email IDs, should be mentioned instead of the details of a single IEM.

6. Through an appropriate provision in the tender document, it must be ensured that the Integrity Pact is deemed as part of the contract so that its conditions bind the parties concerned. A clause should be included in the Integrity Pact that a person signing the Integrity Pact shall not approach the Courts while representing the matters to IEMs, and they shall await their decision.

7. In the case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In the case of sub-contracting, the principal contractor shall take responsibility for the sub-contractor's adoption of the integrity pact. It is to be ensured that all sub-contractors also sign the Integrity Pact. In the case of sub-contractors, the integrity pact shall be a tri-partite arrangement to be signed by the Organization, the contractor, and the sub-contractor. With respect to a particular contract, the Integrity Pact shall be operative from the date both parties sign it.

8. **Appointment of IEMs**

   a) Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs) nominated by CVC at an organisation's request from its list of empanelled IEMs. Three IEMs shall be appointed for Maharatna and Navratna PSEs, and two IEMs shall be nominated in all other organisations.

   b) The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons shall be published on the CVC's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate, the name(s) would be included in the panel for nomination as IEM.

   c) The zone of consideration of eminent persons for empanelment as IEMs would consist of:

      i) Officers who have held the post of Additional Secretary to Govt of India or were in the equivalent or higher pay scale at the time of retirement (whether serving with Govt of India or any State Govt.).

      ii) Persons who held the CMD post of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt of India at retirement.

iii) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies, and other Financial Institutions at retirement. iv) Chief Executive Officer of an organisation (other than listed above and were equivalent or higher to Additional Secretary to Govt, of India, at the time of retirement).

v) Armed Forces Officers in the pay scale equivalent or higher to Additional Secretaries to Govt of India at retirement.

vi) The age of IEM should not be more than 70 years at the time of appointment. vii) If a retired person has accepted a full-time assignment, post-retirement, either in the government sector, private sector, or elsewhere, he shall not be eligible to be on the panel of IEMs. All those empanelled persons who accept full-time assignments elsewhere would cease to remain on the panel from the date they have taken the assignment. In this regard, it would be incumbent upon the empanelled persons to immediately inform CVC about the acceptance of full-time assignment by them.

viii) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed.

ix) A person acting as an IEM shall not be debarred from taking up other assignments, such as consultancy with other organisations or agencies, subject to his declaring that their additional assignment does not involve any conflict of interest and is not a full-time assignment. The IEMs must also sign a declaration of absence of conflict of interest with existing assignments. In case of any conflict of interest arising later from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse themselves from that case.

x) A person may be appointed as an IEM in a maximum of three organisations at a time. An empanelled person cannot be appointed in one organisation for over three years.

9. **Role of IEMs in Integrity Pact Contracts:**

a) Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of fair play in modes of procurement and tendering systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.

b) The entire panel of IEMs should examine the matter jointly, who would investigate the records, conduct an examination, and submit their joint recommendations to the Management of the Port. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.

c) The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the Integrity Pact.

d) IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the complaints in any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

10. **Systemic Improvements**:

a) The Procurement wing of the organisation shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, covered under the Integrity Pact, shall be shared with the IEMs during the quarterly meeting. Such a summary of contracts should include details like tender number, mode of tendering, the period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.

b) The above summary of contracts is to help the IEMs in analysing whether an appropriate mode of tendering is being adopted by the organisation, i.e., limited tender mode or nomination mode is not unduly used, the number of bidders is not too low, a large number of bidders are not excluded while judging the eligibility or during the technical bid evaluation stage, and whether particular firm or set of specific firms is repeatedly getting contracts etc. Based on their analysis, the IEMs can suggest to the management suitable systemic improvement(s) and measures to improve objectivity in decisionmaking, capacity building, etc.

c) It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organization on a half-yearly basis to discuss and review the information on tenders awarded during the preceding six-month period. Additional such meetings, however, can be held as per requirement. All such meetings with the Procurement wing or with the organisation's Chief Executive should be minuted.

11. **Dispute Mediation**:

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both parties shall equally share the fees/expenses on dispute resolution. If the dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

12. **Entitlements of IEMs**:

a) IEMs shall be paid fees of ₹ 25,000/- per sitting subject to a maximum of ₹ 3,00,000/- in a calendar year for the sitting fees.

b) The travel and stay arrangements for the IEMs for such meetings shall equal their entitlements at retirement. Booking travel tickets, as per the mode of travel indicated by the IEM in writing (including email), the organisation shall do local transport and stay. The organisation concerned shall provide a place for meetings and secretarial assistance to IEMs for rendering their job. No payment instead of secretarial aid shall be paid to the IEMs.

c) As mentioned above, the travel/ stay arrangements and fees for meetings held by IEMs for mediation between the management and the contractor shall be the same but in addition to the fees for the regular meetings and would be over and above the ceiling of 3,00,000/- as per calendar year.

Annexure-GM/31

31 Consolidated List of Medical Devices etc

(Refer para 4.3.2-4-d))

Consolidated List of Medical Devices/Equipment and Drugs that can be procured through GTE

Not applicable to KPL

Annexure-GM/32

32 FAQs in Respect of Public Procurement Policy for MSEs

(Refer Para 1.11.2-7-e))

FAQs in Respect of Public Procurement Policy for MSEs Order, 2012

Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.

Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?

Ans. Yes, out of 25% target of annual procurement from MSEs (Not in the specific tender), a sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC) / Scheduled Tribe (ST) entrepreneurs and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneur will also be met from other MSEs.

Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated 26th June 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

Q.No.4: What is the date of implementation of the policy?

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

Q.No.5: Is the Policy transparent, competitive, and cost effective?

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in accordance with a system which is fair, equitable, transparent, competitive, and cost effective.

Q.No.6: Is the policy implemented in parts or fully from its inception?

Ans. As per Gazette Notification (S.O. 5670(E) dated 8th November 2018, it is mandatory for all Central Government Ministries / Departments/ CPSEs to procure at least 25% of their annual procurement

from MSEs including 4% from MSEs owned by SC/ST entrepreneur and 3% from MSEs owned by women entrepreneures

Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?

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

Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?

Ans. (i) Price quotation in tenders: In tender, participating Micro and Small Enterprises, quoting price within price band of L1+15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such MSE shall be allowed to supply up to 25 per cent of total tender value.

(ii) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).

Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop MSE Vendors to achieve their targets for MSEs procurement?

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal. To develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme.

Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSEs must take the following steps:

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

ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS). iv. A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tender process. However, exemption from paying of Performance Bank

Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?

Ans. A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSEs for exemption from 25% target on a case-to-case basis and monitor achievements under the Policy.

Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?

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

Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?

Ans. Given their unique nature, Defence armament imports will not be included in computing 25% goal for M/o Defence. In addition, Defence Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defence sector, by Ministry of Defence itself in accordance with suitable procedures to be established by them.

Q.No.15: From where can the details of the Policy be obtained?

Ans. Policy details are available on the website of this office at www.dcmsme.gov.in.

Q.No.16: Is this policy mandatory under any Act?

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

Q.No.17: How many items are reserved for exclusive purchase from MSEs?

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

Q.No.18: Whether this policy is applicable for works/ trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order,2012.

Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?

Ans. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

Q.No.22: Which are the MSEs owned by SC/ST enterprises?

Ans. The definition of MSEs owned by SC/ ST is as given under:

(a) In case of proprietary MSE, proprietor(s) shall be SC /ST.

(b) In case of partnership MSE, the SC / ST partners shall be holding at least 51% shares in the unit.

(c) In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

Q.No.23: Can the Central Government Ministries/ Departments/ CPSEs who have a meagre value of total procurement be exempted from the Policy?

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSEs, irrespective of the volume and nature of procurement.

Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?

Ans. The Review Committee may consider any request of Ministries / Departments / CPSEs for exemption from the present 25% procurement targets on a case-to-case basis.

Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at SI. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012.Accordingly, the description of SI. No. 202 as indicated in the English version of the Reserved List will be applicable.

Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f. 01.07.2020. Udyam Registered MSMEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration? Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self-certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSEs and State Govts.

Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSEs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?

Ans. The benefits of PPP should be given to all eligible MSEs irrespective of relevance of product Category and as per Sl. No. 3 of FAQ.

Q.**No.30**: Can the relaxation of norms for start-ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where Port may prefer the vendor to have prior experience rather than giving orders to new entities (O.M.No.F.20/2/2014PPD(Pt.) dated 20.09.2016 issued by DoE).

Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in GFR Rules 130, 143, 177 & 197.

Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?

Ans. There is no such provision under the Policy. The Port may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSEs.

Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

Q.No.38: Have all the CPSEs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?

Ans. Most of the CPSEs are uploading their procurement details on the portal.

Q.No.39: Is there any provision to take action against the procuring agency for noncompliance of PPP-MSE under the Policy?

Ans. No, there is no such provision in the Policy.

Q.No.40: What is the objective of the Policy?

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through: - Increased participation in Government purchase.

- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.

Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs?

Ans. To achieve the target Government / CPSEs they can procure.
The items from the list of 358 items reserved for procurement from MSEs.
Items which are being manufactured by MSEs, besides reserved items.

Q.No.42: How is the status of Enterprises as MSEs be verified?

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022.As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

Q.No.43: Can sub-contracting be considered under the procurement target from MSE?

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

Q.No.45 What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSEs?

Ans. CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.

- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs.
- All CPSEs have been requested to procure goods and services from MSEs, through GeM portal only.
- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

Annexure-GM/33

33 Model Clause/ Certificate to be inserted in tenders

Model Clause/ Certificate to be inserted in tenders, etc., w.r.t Restrictions under Rule 144(xi) GFR 2017)

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

A. Model Clauses for Tenders (including tenders issued manually or any electronic portal, including GeM):

I. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.*

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

III. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order means: -

(a) An entity incorporated, established, or registered in such a country; or

(b) A subsidiary of an entity incorporated, established, or registered in such a country; or

(c) An entity substantially controlled through entities incorporated, established, or registered in such a country; or

(d) An entity whose beneficial owner is situated in such a country; or

(e) An Indian (or other) agent of such an entity; or

(f) A natural person who is a citizen of such a country; or

(g) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

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

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

Explanation-

a) "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

b) "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

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

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

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

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

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

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid. VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

Model Certificate for Tenders:

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

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

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfils all requirements in

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

Model additional certificate by Bidders in the cases of specified ToT:

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority. "

OR

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement. "

B. Model Certificate for GeM (to be taken by the GeM from seller during registration on GeM. GeM should also obtain this certificate from all existing bidders as soon as possible):

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country and does not have any specified Transfer of Technology (ToT) from such a country or, if from such a country or if having specified ToT from such a country has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfils all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure-GM/34

34 Guidelines for Evaluation of Concurrent Application

(Refer Para 7.5.1)

Guidelines for Evaluation of Concurrent Application of the MSE and MII Preferences

1. The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, guidelines were issued by DoE. These guidelines are explained below. Examples to illustrate the application of these guidelines are given in the Annex to this Appendix.

2. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category: If Supplier is:	Terminology: Supplier	Acronym for this Para
both MSE & Class-I local supplier	"MSE Class-I local"	M-C1
MSE but not Class-I local supplier	"MSE but non-Class-I local"	M-NC1
not MSE but is Class-I local supplier	"Non-MSE but Class-I local"	NM-C1
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local"	NM-NC1

3. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

Scenario-1: Items covered under Para 3(a) of PPP- MII Order, 2017 for which Nodal Ministry has notified sufficient local capacity and competition [(para 1.11.3-2-a) of this manual)]: For these items, only Class-I local suppliers are eligible to bid, irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs, which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as follows:

Possible scenarios can be as under:

i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.

ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs Class-I local supplier' (if any and eligible - 25% quantity,) as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.

Scenario 2: Items reserved exclusively for procurement from MSEs as per PPP-MSE Order: These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1

ii) L-1 is "MSE non-Class—I local supplier" - Purchase preference is to be given to "MSE Class-I local supplier" if any, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.

iii) If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:

Scenario 3: Items covered under *para 1.11.3-3) b) of this manual* are divisible items, and both MSEs, as well as Class-I local suppliers,are eligible for purchase preference. Possible scenarios can be as under:

i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.

ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to "MSE Non-ClassI Local Supplier", if any if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.

iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to "Non-MSE Class-I local supplier", if any if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.

iv) L-1 is "Non-MSE non-Class-I local supplier" – Firstly, purchase preference (25% quantity) is to be given to MSEs (if any and eligible) as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs above" (i.e., 37.5%) if any and eligible as per PPP- MII Order. If there is an eligible 'MSE Class-I local supplier', then he should be firstly given purchase preference of 25% as MSE, if eligible as per PP-MSE order, and a further purchase preference for "50% of the tendered quantity minus quantity allotted as MSE" (i.e. 37.5%) if eligible as per PPP- MII Order – therefore a total of 62.5% quantity. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annex to this annexure).

Scenario 4: Items covered under *para 1.11.3-3) b)iii) of this manual* are non-divisible items, and both MSEs and Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.

ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If the lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.

iii) If conditions mentioned in sub paras 1) and 2) above are not met i.e., L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:

a. L-1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" — Contract is to be awarded to L-1.

b. L-1 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE (class-I local supplier or non-class-I local supplier), if eligible as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class-I Local supplier if eligible as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept — — contract to be awarded to L-1.

Scenario 5: Items reserved for both MSEs and Class-I local suppliers: These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/ Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.

Scenario 6: Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

Kindly refer to the illustrative example in the annex to this annexure.

Annex: Examples of Evaluation of Concurrent Application of the MSE and MII Preferences

1. Given below are the examples to explain the different scenarios that may arise during the concurrent evaluation of MSE and Class-I local suppliers. The scenarios are further divided into the various sub-scenarios considered as 'Distribution (D)' to provide clarity on the quantity distribution, which shall take place among the MSE and Class-I local suppliers. . Please note the following acronyms, in table in para 2 of Annexure 34 above.

2. Example explaining applicability in scenario explained in Scenario 3 in Annexure 34 (Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.) Item — Desktop computer, Qty — 100 Nos.

(i) **L-1 is 'Non-MSE but Class-I Local Supplier' (NM-C1)** [Scenario 3 -2) in Annexure 34] Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	NM-C1	74 (L1)	75 (L1)	75 (L1)	100 (L1)
2.	B	110	L2	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Does not accept

3.	C	112	L3	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
4.	D	115	L4	M-NC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE)	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.
b) MSE bidders to be invited for placement of 25% of tendered quantity of 100 Nos. i.e., 25 Nos.
c) Those MSE bidders are to be invited whose quoted rates falls within 15% margin of purchase preference, to match the L1 price.
d) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. MSE bidders B (L2) and D (L4) are invited to match L1 price i.e., INR 100/-.
2. Both bidders B and D agree to match the L1 price.
3. The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)
4. Bidders B and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5. The remaining quantity of 74 nos. of computers [100-26] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1. Either bidder B or bidder D agrees to match the L1 price.
2. 25 nos. quantity (25% of 100 nos.) is placed on the bidder (B or D).
3. The balance quantity of 75 nos. computers (100-25) is placed on the L1 bidder.

C. Distribution-4 (D-4)

1. None of the MSE bidders agree to match the L1 price. No MSE preference given.
2. Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder "A", being a Class I bidder.

(ii) L-1 is "MSE but non-Class-I Local Supplier (M-NC1) [Scenario 3 -3) in Appendix-8]. Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	M-NC1	50 (L1)	50 (L1)	50 (L1)	100 (L1)
2.	B	110	L2	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

3.	C	112	L3	NM-C1	Accepts 50 (MII)	Does not accept	Does not accept	Does not accept
4.	D	115	L4	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
5.	E	118	L5	NM-C1	Not Eligible	Accepts 50 (MII)	Does not accept	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Accepts 50 (MII)	Does not accept

a) First purchase preference is to be given to Class-I local supplier as per PPP-MII Order, for placement of 50% of tendered quantity of 100 Nos. i.e., 50 Nos.

b) The Class-I local supplier is to be invited whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.

c) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. Class-I bidder C (L3) is invited to match L1 price i.e., INR 100/-.
2. Bidders C agrees to match the L1 price.
3. Bidder C is awarded the quantity of 50 nos.
4. The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1. The bidder C does not agree to match the L1 price, then the next Class-I bidder i.e., Bidder E is invited to match the L1 price.
2. Bidder E agrees to match the L1 price, and the 50 nos. quantity is awarded on Bidder E.
3. The balance quantity of 50 nos. computers (100-50) is placed on the L1 bidder 'A'.
4. In case, Bidder E does not agree to match the L1 price, the next Class-I bidder is invited which is Bidder 'F'.
5. Bidder F agrees to match the L1 price, then the 50 nos. of quantity are awarded to Bidder F, while the balance quantity of 50 nos. computers is placed on the L1 bidder 'A'.

C. Distribution-4 (D-4)

1. None of the Class-I local suppliers agree to match the L1 price. No MII preference given.
2. Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder 'A'.

(iii) L-1 is "Non-MSE non-Class-I local supplier" (NM-NC1) [Scenario 3 -4) in Appendix-8]. Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Bidder Status	D-1	D-2	D-3	D-4	D-5	D-6	D-7
1.	A	100	L1	NM-NC1	37 (L1)	37 (L1)	37 (L1)	37 (L1)	37 (L1)	50 (L1)	75 (L1)
2.	B	110	L2	NM-C1	Accepts 37 (MII)	Accepts 38 (MII)	Does not accept	Does not accept	Does not accept	Accepts 50 (MII)	Does not accept
3.	C	112	L3	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Accepts 25 (MSE)
4.	D	115	L4	MC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE) + 38 (MII)	Accepts 13 (MSE) + 37 (MII)	Does not accept	Does not accept	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Does not accept	Not Eligible	Does not accept
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Accepts 38 (MII)	Not Eligible	Does not accept
7	G	120	L7	M-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.

b) MSE bidders having their quoted rates within 15% margin of purchase preference to be invited for placement of 25% of tendered quantity, subject to matching the L1 price.

c) The next purchase preference is to be given to Class-I local supplier as per PPP-MII Order, whose quoted rates falls within 20% margin of purchase preference, to match the L1 price.

d) Post these purchase preferences, the balance quantity is placed on the L1 bidder who is Non-MSE non-Class-I local supplier.

e) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. MSE bidders C and D are invited to match L1 price i.e., INR 100/-. Bidder F and G, being the MSE bidders are not invited since their quoted prices falls beyond the margin of preference of 15%.
2. Both bidders C and D agree to match the L1 price.
3. The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.)
4. Bidders C and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)

5. The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers (50% of 74).
6. Bidder B, being a Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
7. Bidder B agrees to match the L1 price. The quantity of 37 nos. of computers is awarded to bidder 'B'.
8. The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

B. Distribution-2 (D-2)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C agrees to match the L1 price, but MSE bidder D does not agree to match the L1 price.
3. The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder C.
4. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5. Bidder B, being the Class-I local supplier, is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6. Bidder B agrees to match the L1 price. The quantity of 38 nos. of computers is awarded to bidder 'B'.
7. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

C. Distribution-3 (D-3)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C does not agrees to match the L1 price, but MSE bidder D agrees.
3. The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder D.
4. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 38 nos. of computers is awarded to bidder 'D'.
7. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

D. Distribution-4 (D-4)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C and D agree to match the L1 price. The quantity of 25 nos. is distributed equally among bidders B and D i.e., 25/2=12.5 nos. (say 13 nos.) each.

3. The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 37 nos. of computers is awarded to bidder 'D'.
6. The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

E. Distribution-5 (D-5)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C agrees to match the L1 price, however, bidder D does not agree. Hence, the 25% of 100 nos. of computers i.e., 25 nos. are awarded to MSE bidder C.
3. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5, say 38 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D also does not agree to match the L1 price. The next class-I local supplier 'E' is invited that does not agree either. The next class-I local supplier 'F' is invited (who happens to be a MSE bidder as well, however, since the quoted price of bidder 'F' in case of MSE preference was beyond 15% margin of preference, hence it was not invited to match the L1 price while going for MSE preference). For MII preference, the price quoted is within the margin of 20%. The bidder 'F' agrees to match the L1 price. The quantity of 38 nos. of computers is placed on bidder 'F'.
6. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

F. Distribution-6 (D-6)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. Neither of the MSE bidders (C and D) agrees to match the L1 price. Hence, no MSE purchase preference is given.
3. The next purchase preference is given to Class-I local supplier as per the MII Order for the 50% of the tendered quantity i.e., for 50 nos. of computers. Bidder 'B' being the lowest quoting Class-I local supplier with its quoted price falling within the margin of purchase preference of 20% is invited to match the L1 price.
4. Bidder 'B' agrees to match the L1 price. The quantity of 50 nos. of computers is awarded on bidder 'B'.
5. The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder 'A'.

G. Distribution-7 (D-7)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidder 'C' agrees to match the L1 price only. Hence, 25% of the total tendered quantity i.e., 25 nos. of computers are awarded on the MSE bidder 'C'.
3. The next purchase preference is to be given to Class-I local supplier as per the MII Order for the 50% of the balance quantity of 75 nos. i.e., for 37.5 or say 38 nos. of computers. First Class-I bidder invited is bidder 'B' to match the L1 price. Bidder 'B' does not agree to match the price. Subsequently, bidders 'D,' 'E' and 'F' are invited one by one, after each of the bidder does not agree to match the L1 price.
4. None of the Class-I local suppliers agree to match the L1 price. Hence, no purchase preference under MII order is given.
5. The balance quantity obtained, after the placement of 25 nos. quantity of computers on MSE bidders, is placed on bidder 'A' the L1 bidder for 75 nos. computers.

3. Example explaining applicability in Scenario 4 in Appendix-8 (Non-Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.). Item — Software License, Unit — 100 Nos..

(i) **L-1 is "Non-MSE but Class-I Local Supplier"** [Scenario 4 -2) in Appendix-8]. Details of bids received:

S. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE but Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"MSE Class-I local supplier"
4.	D	115	L4	"MSE Class-I local supplier"
5.	E	118	L5	"Non MSE non-Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

a) Here, purchase preference is to be given to the lowest quoting 'MSE Class-I local supplier,' provided its rate falls within the purchase preference of 15%.

b) Bidder 'C' is MSE Class-I local supplier with price within the 15% margin of preference. Bidder C is invited to match the price of L1. If agreed, the entire order (100 nos. of software licenses) is to be placed on Bidder C.

c) If lowest quoting 'MSE Class-I local supplier' (Bidder 'C') does not agree to match the L1 price, the next higher 'MSE Class-I local supplier' i.e., bidder 'D' is invited to match the L1 price. If agreed, the entire order is to be placed on bidder 'D.'

d) Bidder 'F' though MSE Class-I local supplier, cannot be considered since its price falls beyond the 15% margin of preference.

(ii) **L-1 is "MSE but non-Class-I Local Supplier"** [Scenario 4 -1) in Annexure 34]: The approach explained in example 2. (i) above to be followed.

(iii) **L-1 is neither "MSE Class-I Local Supplier" nor "MSE Class-I Local Supplier" is eligible** [Scenario 4 -3) in Annexure 34], then:

1. L-1 is MSE but non-Class-I local supplier: Entire quantity [100 nos. of software license] is to be placed on the L-1; or
2. L-1 is Non-MSE but Class-I local supplier: Entire quantity [100 nos. of software license] to be placed on the L-1.

(iv) **L-1 is "Non-MSE non-Class-I Local Supplier"**. Details of bids received:

S.No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE non-Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"Non MSE but Class-I local supplier"
4.	D	115	L4	"MSE but non- Class-I local supplier"
5.	E	118	L5	"Non MSE but Class-I local supplier "
6.	F	120	L6	"MSE but non- Class-I local supplier"
7.	G	125	L7	"MSE Class-I local supplier"

1. First, MSE preference shall be exercised. Hence, lowest quoting MSE but non-Class-I local supplier is invited to match the price of L-1. Bidder 'B' has quoted the price that falls within the purchase preference of 15%. If Bidder 'B' agrees, the entire order is to be placed on bidder 'B.'
2. If bidder 'B' does not agree, bidder 'D' shall be invited (price falling within the purchase preference of 15%), to match the L-1 price. If agreed, entire order to be placed on bidder 'D.'
3. If bidder 'D' also does not agree, now, purchase preference to Class-I local supplier shall be provided. Bidder 'F' cannot be considered since the quoted price is beyond the margin of preference of 15%.
4. Bidder 'C' is invited to match the L-1 price [quoted price within the purchase preference of 20%, as per the PPP-MII Order]. If bidder 'C' agrees, the entire order is to be placed on 'C.'
5. If bidder 'C' does not agree, bidder 'E' to be invited, as the quoted price is within the purchase preference of 20%. If bidder 'E' agrees, the entire order is to be placed on bidder 'E.'
6. If the non MSE but Class-I local supplier, bidder 'E' also does not agree to match the L-1 price, then the entire order is to be placed on the L-1 i.e., bidder 'A'.

Annexure-GM/35

35 Format of Declaration by the Arbitrator

(Refer para 9.9.9-1-c))

1. Name _____
2. Contact Details: _____
3. I hereby certify that I have retired from [*Organisation/ Unit]* w.e.f. _____in_____grade.

Or

I hereby certify that I am serving Officer and am presently posted as_____ in grade.

4. I have no past or present relationship in relation to the subject matter in dispute, whether financial, business, professional or other kind.

Or

I have past or present relationships in relation to the subject matter in dispute, whether financial, business, professional or other kind. The list of such interests is as follows:

_____

5. I have no past or present relationship with or interest in any of the parties, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996.

Or

I have a past or present relationship with or interest in any of the parties, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to my independence or impartiality in terms of the Arbitration and Conciliation Act 1996. The details of such a relationship or interest are as follows:

_____

6. There are no concurrent circumstances that are likely to affect my ability to devote sufficient time to the arbitration and, in particular, to finish the entire arbitration within twelve months.

Or

There are circumstances that are likely to affect my ability to devote sufficient time to the arbitration and, in particular, to finish the entire arbitration within twelve months. The list of such circumstances is as follows:

_____

Annexure-GM/36

36 Payment and Receipt Procedures of GeM

(Refer para 4.17.3-12)

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

a) Supply of Goods & Services

b) Supply, Installation, Testing and Commissioning of Goods

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

i) In respect of contracts for Supply of Goods, 100% payment including GST should be made after receipt and acceptance of Goods and generation of "Goods CRAC" (Consignee Receipt and Acceptance Certificate) subject to recoveries, if any, either on account of short supply or 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. For 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 able 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 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 to ensure availability of payable funds for the next payment cycle. Blocked fund will be treated as accrued expenditure by PFMS for the fiscal year in question and it will not be withdrawn for any other purpose other than the one for which the amount is Blocked.

5. To alleviate the operational issues as well as to ensure optimum utilization of available funds, the following is clarified (Notified vide OM No. F.6/18/2019.PPD issued by Department of Expenditure dated 29.12.2020):

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 Head of Department (HoD), the DDO/ PAO and finally up to AS&FA of concerned Ministry/ Department shall be alerted by email and SMS by GeM. On failure in making available the required funds in the appropriate head of account within 10 days, seller has right to decline supply and to seek contract cancellation without any administrative action against the seller. Also, in such a case, any delay in delivery by the seller will also become exempt from the provision of Liquidated Damages.

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

emergency cases after giving a clear undertaking that he will ensure timely availability of funds and unblocking will not lead to delay payments to sellers. However, such unblocking will not be allowed if the seller has already raised an invoice (before 1st March of Financial Year).

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

6. 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.

7. 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.

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

9. 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.

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

i) 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.

ii) 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.

iii) 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).

iv) 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)

v) 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 must mandatorily acknowledge receipt of stores/ milestone achievement/ service delivery through generation of PRC on GeM.

vi) 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).

vii) 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.

viii) 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.

ix) If it is found at any stage that seller/ service provider has sent/ uploaded incorrect 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.

11. **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.

12. After generation of CRAC, the Buyer shall prepare 'Payment advice' on GeM Portal, indicating any contractual deductions such as penalties for violation of Service Level Agreement (as applicable)/Liquidated Damages for delayed supplies/ milestone achievement/ service delivery etc. which will be used by GeM portal to compute the net amount payable for the accepted quantity/milestone achievement/service delivery after factoring in the contractual deduction(s) and generate claims for payments digitally/e-signed by the Buyer. This claim for payment shall

be made available to the DDO on GeM Portal and the requisite data will also be pushed online in the PFMS. DDO will log into PFMS and generate the Bill against the said claims and forward the same to the PAO/Paying Authority for payment, after deducting any statuary deductions including TDS as applicable.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. The multi-year liabilities so created as referred to in para (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 fiscal year and in the Medium-Term Expenditure Framework (MTEF).

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

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

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

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

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

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

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

f. Any withdrawal/transfer by the NPAE from this account, except for payment to the Seller/ 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 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 (vi) (A) (9) above regarding Provisional Receipt of Stores on GeM and Para (vi) (A) (10) Consignee Receipt and Acceptance of Stores on GeM for PFMS Buyers.

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

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

8. In case, even after 10 days of issue of Consignee receipt and acceptance certificate (CRAC)/ auto generated CRAC, the buyer has not initiated the payment process through the GeM platform, a payment trigger will be automatically generated for payment equivalent to 80% of the

corresponding quantity/ milestone achievement/ service delivery deduced by the system as per CRAC. Simultaneously intimation will be sent to the HoD, buyer and NPAE Nodal officer for GeM, regarding the release of payment, at their risk and cost in line with the terms and condition (T&C) and SLA of procurement on GeM. The residual payment of 20% is to be processed by the buyer within 35 days after adjusting for any statutory deduction and damages, failing which after 35 days, the same will be released to the Seller/ Service Provider automatically through an alert to the bank by the GeM Platform, after statutory deductions and any system know deductions.

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

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

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

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

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

Annexure-GM/37

37 Format for Show-cause Notice for Debarment

(Refer para 3.7.2-3-c)

KAMARAJAR PORT LIMITED

File No: _____ Date _____

To,

The [Company Name]

[Company Address]

Subject: Show Cause Notice for debarment of your Company from participation in Tenders of [Port/Govt. of India/ Ministry/ Department/ CPSE/ Organisation] for the following misdemeanor:

References: Relevant Tenders/ Contracts: [.....]

Dear Sir/Madam,

1. As a supplier participating in government tenders/ contracts, you must maintain the highest standards of ethical conduct and transparency, as laid down in the Code of Integrity in Public Procurement and other provisions in the relevant Tender Documents/Contracts.

2. Due to your misdemeanor mentioned below relating to the Tender Document/ Contract referred to above, you are proposed to be debarred from participation in all tenders/ contracts of [Ports/Govt. of India/ Ministry/ Department/ CPSE/ Organisation] for a period not exceeding two years.

3. **Articles of Misdemeanours**: As per the imputations detailed in Annexure-1 attached herewith, it is determined that you have committed the following serious misdemeanors relating to the tender/ contract referred to above:

   a) You breached the Code of Integrity in Public Procurement as specified in [clause .....] in the Tender Document/ Contract referred to above (please also see Rule 175 of GFRs 2017.

   b) You made a false declaration of local content as Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, Dtd 16/09/2020 or later, i.e., the Make in India Order), which is also be treated as a breach of code of integrity.

   c) Any other actions or omissions (Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement) bythe firm that, in the opinion of the Port/Ministry/ Department, warrants debarment.

4. **Opportunity to Explain:**

   a) In light of the above misdemeanors, we hereby grant you a fair opportunity to explain in writing why you should not be debarred, as mentioned in para 2 above.

   b) Your response should include Specific Reasons, Mitigating Factors, and Corrective Measures that you intend to take to rectify the situation and prevent recurrence.

   c) Please also mention if you desire to avail of additional opportunities for an oral hearing in addition to the written submissions.

   d) Please address your response to the undersigned using the contact details mentioned below.

   e) **Response Deadline:** Please submit your response within 15 days of receiving this notice. Failure to do so will result in further action, including an order for debarment.

5. You are required to give details of all 'allied' firms that come within the sphere of effective influence based on the following criteria:

   a) You, being a proprietary firm, own it,

   b) You, being a partnership firm, have common (all or majority of) partners, or any one of partners having a profit share of 20% or more in it.

   c) You have common Management (say the majority of the directors) with it.

   d) Your partners or directors have a majority interest in its management;

   e) You have a controlling voice by owning substantial or majority (20% or more) shares in it.

   f) You directly or indirectly control it, are controlled by it, or are under common control through any agreement/ MoU or otherwise.

   g) You are a successor/ subsidiary to it or vice-a-versa;

   h) You have common offices/ manufacturing facilities with it.

6. Annexure-1 details the imputation based on which these misdemeanours have been determined.

7. Annexure 2 lists the documents relied upon for establishing such imputation.

Sincerely,

[Name]

[Designation]

[Contact Information]

Annexure 1: [Details of actions/ omissions committed by the firm] Annexure-2: [List of relied upon documents]

DA: [Copies of documents attached]

Annexure-GM/38

38 Format for Debarment Order

(Refer para 3.7.2-3-b)

KAMARAJAR PORT LIMITED

File No: _____ Date _____

To,

The [Company Name]

[Company Address]

Subject: Your company has been debarred from participating in Tenders of [Kamarajar Port Limited/Major Ports of India].

References:

a) Relevant Tender/ Contract: [....]
b) This office Show-Cause notice No. [....], dated [....]
c) Your Written reply(ies) to the show-cause notice No [....], dated [....] and
d) [Oral Hearing grant to you on [....] with [....]]

Dear Sir/Madam,

1. After thoroughly evaluating the evidence and your submission mentioned above, it has been established that your company committed the serious misdemeanour mentioned below. As a result, this Port has decided to debar your company from participating in any of our tenders of all entities covered under the jurisdiction mentioned below for a period mentioned below.

   a) The Debarment shall automatically extend to all your allied firms, listed in Annexure-2, attached herewith. In the case of a joint venture/ consortium, all partners shall also stand debarred.

   b) Debarment does not impact the Ports' other contractual or legal rights.

   c) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.

2. **Reasons for Debarment:**

   It is determined that you have committed the following serious misdemeanours relating to the tender/ contract referred to above. Details of these misdemeanours are given in Annexure-1, attached herewith:

   [Please see the format of show-cause notice for possible misdemeanours]

3. **Other Consequences of Debarment:**

   a) During the validity of the debarment order, no contract of any kind whatsoever shall be placed on your firm, including your allied firms, by any Port/Ministries/ Departments/

Attached/Subordinate offices, including autonomous bodies and CPSEs, covered under the jurisdiction mentioned above.

b) If your firm, including your allied firms, submitted the bid before this debarment, it shall be ignored.

c) Your firm, including your allied firms, stands removed from the list of registered/ approved contractors maintained, if any, by all entities covered by the jurisdiction mentioned above.

d) Your firm's Bid Security/ Performance Security for the subject tender/ contract shall be forfeited.

4. **Jurisdiction of Debarment:**

[This debarment applies to this Port/Major Ports of India/Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies. OR

This debarment applies to this Port/Major Ports of India/Ministry and all its departments, attached and subordinate offices, Public Sector Enterprises, and autonomous bodies as an interim measure. However, the Government of India reserves its right to extend this debarment to all its Ministries, Departments, and their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies after following due process.]

OR

This debarment applies to this Port/Major Ports of India/Government of India and all its Ministries and departments, their attached and subordinate offices, Public Sector Enterprises, and autonomous bodies.]

5. Debarment Duration:

Effective immediately, your company is debarred from participating in any procurement process of the entities covered by the jurisdiction mentioned above for a period of [two years].

6. Appeal Process:

If your company wishes to appeal against this decision, you may submit an appeal within 15 days of receiving this letter. The appeal, supported by relevant evidence and addressed to the appellate authority [....], should be sent to the undersigned using the contact details below.

7. Revocation of Debarment:

Upon completion of the debarment period, this debarment shall automatically stand revoked, and your company may apply for registration again as per procedure.

We trust that your company shall rectify its conduct after the debarment period.

Sincerely,

[Name]
[Designation]
[Contact Information]

Annexure 1: [Details of actions/ omissions committed by the firm]

Annexure-2: [List of Allied Firms that also stand debarred] Copy
To:

1. All Allied Firms as per Annexure-2 – Your firm also stands debarred as above.
2. Major Ports of India/Ministry/ Department (or GeM-CPPP in case of debarment by DoE) for publication on the Website
3. Circulation to Procuring Entities

SECTION-2

APPENDICES

GOODS MANUAL

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Appendix-GM-S2/A1

1 Advanced Concepts of Value for Money

1.0 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a person's hierarchy of needs by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchies of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value), and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond-encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of its useful life. This is called the disposal value. Normally, when people buy a car, they consider the estimated disposal value of different choices of models. Value is the sum of all the three values.

2.0 Total Cost of Ownership

1. While the value of a product covers all components of value over the "Whole-Of-Life" (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over the WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car that has a high cost of operating. This is called WOL, "Life-Cycle-Cost" (LCC), or "Total Cost of Ownership" (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

    a) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;

b) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;

c) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with its performance are not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on

d) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value), as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs.

3.0 Value for Money

1. Besides the value of a product or service, the customer also has his notion of the "value" of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, the Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the Government, ensuring VfM in Appendix procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs, which is 'fit for purpose' and just meets the specification. VfM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement commences. To address this issue, a change in the procurement approach, specification or business strategy may be required.

2. Where an alternative that does not have the lowest WOL costs is chosen, then the additional 'value added' benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any 'added value' that justifies a higher price must flow from these defined criteria. In public procurement, VfM is often primarily established through the competitive process. An intense competition from a vibrant market will generally deliver a VfM

outcome. However, where competition is limited or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. Major contracts can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

a) Fitness for purpose;

b) Potential vendor/contractor's experience and performance history;

c) Flexibility (including innovation and adaptability over the lifecycle of the procurement);

d) Environmental sustainability (such as energy efficiency and environmental impact); and

e) Total cost of ownership

3. However, due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable and hence is not normally useable in routine Public Procurement cases. Therefore, preference is given to alternative means for ensuring VfM by way of optimal description of needs, development of value-engineered specifications/ Terms of Reference, appropriate packaging/ slicing of requirements and selection of appropriate mode/ tendering systems of procurement, etc.

Appendix-GM-S2/A2

2 Legal Aspects of Public Procurement

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – 'Fundamental Rights') grants all its citizens the right "to practise any profession or to carry out any occupation, trade or business". Article 14 of the Constitution (under Part III – 'Fundamental Rights') grants all persons the right "to equality before law or equal protection of law within the territory of India". This has been interpreted by courts to ensure that every citizen/ person in India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit the stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus, a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state Governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, the Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, the legal phrase "For and on behalf of the President of India/the Governor of State" is written to signify this fact. In a state Government, the persons who are authorised to do so are listed in the DFPR. Various Departments expand upon provisions of DFPR by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 also covers this aspect.

1.3 Other Mercantile Laws

A procurement contract, besides being a commercial transaction, is also a legal transaction. Several commercial/mercantile laws are applicable equally to the private sector and public procurement, such as the Indian Contract Act, the Sales of Goods Act, the Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating

to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage. Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

1. A public procurement contract, besides being a commercial transaction, is also a legal transaction. Several laws may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting the procurement of goods; however, they are not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, an additional set of laws may be relevant:

   a) The Constitution of India;

   b) Indian Contracts Act, 1872;

   c) Sale of Goods Act, 1930;

   d) Arbitration and Conciliation Act, 1996, read with the Arbitration and Conciliation (Amendment) Act, 2015 and 2021;

   e) Mediation Act, 2023

   f) Competition Act, 2002, as amended with Competition (Amendment) Act, 2007;

   g) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;

   h) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);

   i) Right to Information (RTI) Act 2005;

   j) Central Vigilance Commission Act, 2003;

   k) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);

   l) Prevention of Corruption Act, 1988;

m) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999; and FEMA (Current Account Transactions) Rules, 2000.

2. The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act of 1872, read with the Sale of Goods Act 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2.1 Elementary Legal Practices

2.2.2 What is a Contract?

The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 Proposal or Offer

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the bidder is the proposal. The invitation to tender and instructions to bidders do not constitute a proposal.

2.2.3 Acceptance of the Proposal

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

2.2.4 What agreements are contracts?

An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable.

a) Competency of the parties

b) Freedom of consent of both parties

c) Lawfulness of consideration

d) Lawfulness of object

2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.3.1 Parties to the Contract

Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

a) Individuals

b) Partnerships

c) Limited Companies

d) Corporations other than limited companies

i) **Contracts with Individuals:** Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

ii) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. It should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

iii) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement more than power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification, or the position may be verified

by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where persons other than Directors or authorized Managing Agents sign the tenders, it may be necessary to examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

iv) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co-operativeSocietiesActandSocietiesRegistrationActarealsoartificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract must be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language that they use, there is no agreement. The misunderstanding, which is incompatible with the agreement, may occur in the following cases: -

a) When the misunderstanding relates to the identity of the other party to the agreement,

b) When it relates to the nature or terms of the transactions,

c) When it relates to the subject matter of the agreement.

2.5 Free consent of both Parties

1. The consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation, or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract void able at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

2. In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

3. Distinction has also to be drawn between a mistake off act and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the promisor, or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an actor a promise which is illegal or impossible has no value.

2.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

2.9 Communication of Acceptance

1. A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the bidder firm should be obtained to keep the offer open for further period or periods.

2. The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in Government contracts is generally by post and the acceptance is, therefore, complete as soon as it is

posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic foolproof mode like registered post acknowledgement due, etc.

2.10 Acceptance to be identical with Proposal.

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter-offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the bidders, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter-offer should be made, such counteroffer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law, such contract is void.

2.11 Withdrawal of an Offer or Proposal

1. In cases where the bidder has offered to keep its offer open for a specified period but without any consideration (e.g., bid security is not asked/ waived/ exempted/ not deposited, in any form), he may withdraw/ revise/ modify its offer at any time before its acceptance by the accepting authority (i.e., dispatch of the acceptance from the accepting authority, even though it may not have reached the bidder). No legal obligations shall arise from such withdrawal, revision, or modification of the offer.
2. Where, however, a bidder has agreed to keep his offer open for a specified period for a consideration (e.g., Bid Security, or Bid Securing Declaration, in any form, deposited by the bidder), then withdrawal/ revision/ modification of such an offer by the bidder before the specified period would entitle the accepting authority to forfeit the Bid Security and/ or invoke Bid Securing Declaration or any other relevant clause in this regard, in the Tender Document, for any other action. However, even in such a case, no legal obligations shall arise if such a withdrawal, revision, or modification reaches the accepting authority *before the tender's opening date and time*. In any case, the offer lapses automatically after the validity of the offer is over.

2.12 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the bidder. A telegraphic revocation of acceptance, which reaches the bidder before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.14 Discharge of Contracts

A contract is discharged, or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

a) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract, it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

b) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction or destroys the foundation of the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

c) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.

d) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented, and the contract is thereby discharged.

2.15 Stamping of Contracts

1. Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

2. The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where, but for such exemption, the Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which the Government would be liable are set out in Section 29 of the Act).

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should therefore follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which different authorities may execute, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised, and the general procedure prescribed about various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred to as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

a) Date of signing of the contract.

b) Furnishing of performance bond in terms of performance security.

c) Receipt of Bank Guarantee for advance payment.

d) Obtaining an export licence for store supply by the seller and confirmation by the buyer.

e) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Sales of Goods Act, 1930

3.1 Scope

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

3.2 Concept of Transfer of Property (Passing of Title)

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

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

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

    b) **Concept of "Res Prit Domine"** -- Risk Follows Ownership: This concept simply means that, as a general rule, risk follows the ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time – irrespective of whosoever is in the "possession of the goods."

c) **Action against Third parties:** When the goods are, in any way, damaged or destroyed by the action of third parties, only the owner of the goods can act (claim, litigation) against them.

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

3.3 Document of Title to Goods

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

3.4 Doctrine of Caveat Emptor

The Sales of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods; it is not a seller's duty to point out the defects in goods. This doctrine is not in consonance with modern times but, unfortunately, is a legal position. This, however, does not apply if the seller obtains the buyer's consent to buy by knowingly concealing the defects that the buyer could not have reasonably discovered at the time of procurement. The caveat emptor is also diluted under some implied conditions in a contract for sale.

3.5 Provision of the Act regarding Statutory Variations in Taxes and Duties

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

4.0 Salient Features of the Indian Arbitration & Conciliation Act 1996

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

4.1. Arbitration

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

4.2. Arbitrator, Arbitration and Arbitral Award

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

4.3. Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen, or which may arise between them, in respect of a defined legal relationship, whether contractual or noncontractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts and are bound instead to refer the parties to arbitration. Port May lay down that Arbitration Clause would not be applicable for claims below and/ or above a threshold (say below Rs. 25 Lakhs and above Rs. 100 Crores, on the lines of ONGC). Disputes involving claims above Rs. 100 crores shall be adjudicated under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This Agreement should state that it shall continue to survive 120 days after termination, completion, or closure of the Contract.

4.4. Ad-hoc and Institutional Arbitration

Ad-hoc arbitration and institutional arbitration are two different modes of arbitration under the Indian Arbitration and Conciliation Act, 1996.

4.4.1. Ad-hoc Arbitration

1. In ad-hoc arbitration, the parties are free to choose the arbitrators, the rules, the procedures, and the administrative support for their dispute resolution.
2. In institutional arbitration, the parties agree to refer their dispute to an arbitration institution (see list below), which have their own standardised and proven set of rules, a panel of certified arbitrators, and administrative services.

3. Ad-hoc arbitration may be more flexible and cheaper than institutional arbitration, as it allows the parties to tailor the process according to their needs and preferences. However, it may also be more time-consuming and uncertain, as it depends on the cooperation and competence of the parties and the arbitrators.

4. Institutional arbitration may be more efficient and dependable than ad-hoc arbitration, as it offers a standardized and streamlined process, with quality control and supervision by the arbitration institution. However, it may also be more expensive and rigid, as it involves fees for the institution and adherence to its rules.

5. Traditionally, India has favoured ad-hoc arbitration over institutional arbitration due to several factors. However, in recent years, there has been a shift towards institutional arbitration as India seeks to improve its arbitration regime and attract more foreign investment.

4.4.2. Institutional Arbitration

1. Procuring entities are encouraged to use Institutional Arbitration of large value arbitration (say for claims more than Rs 5 Crore) on the line of, what has been legislated by the Government of Maharashtra. For this purpose, the Arbitration Clause should be modified to include this provision.

2. There are several recognised institutional arbitration centres in India that provide arbitration services under their own rules and procedures. Some of them are:

   a) India International Arbitration Centre (IIAC): It was created in 2019 by an Act of Parliament as an institution of national importance. It provides institutional arbitration services in India and abroad.

   b) Delhi International Arbitration Centre (DIAC): It was established in 2009 by the Delhi High Court and offers arbitration, mediation, and conciliation services.

   c) Mumbai Centre for International Arbitration (MCIA): It was launched in 2016 as a joint initiative of the Government of Maharashtra and the domestic and international business and legal communities. It aims to provide a world-class arbitration facility in India.

   d) Indian Council of Arbitration (ICA): It was founded in 1965 as a non-profit organisation under the aegis of the Federation of Indian Chambers of Commerce and Industry (FICCI). It administers both domestic and international arbitrations.

e) Indian Institute of Arbitration & Mediation (IIAM): It was established in 2001 as an autonomous institution dedicated to the promotion and development of alternative dispute resolution (ADR) in India.

4.5. Appointment and Composition of Arbitral Tribunal

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

4.6. Challenge to Appointment of Arbitrator

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

4.7. Conduct of Arbitral Proceedings – Ad-hoc Arbitration

The parties are free to agree on the procedure to be followed for conducting proceedings, as well as the location, language of hearings, and written proceedings. If any agreement fails, the arbitral tribunal may decide on these aspects. The parties shall be treated equally, and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by the Indian Evidence Act (This Act would be replaced by Bhartiya Sakshya Adhiniyam (BS), 2023 from 1st July 2024) 1872. Limitation Act, 1963, is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

a) Determine the admissibility, relevance, materiality, and weight of any evidence;

b) Decide on their jurisdiction;

c) Decide on interim measures;

d) Termination of proceedings; and

e) Seek court assistance in taking evidence.

4.8. Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

4.9. Recourse against Arbitral Award

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

4.10. Changes introduced by the Arbitration and Conciliation (Amendment) Act, 2015

4.10.1 Independence, Disqualification and Obligations of arbitrators at the time of appointment

1. **Independence, Impartiality and Accountability of Arbitrators:** A fixed fee structure ensures the independence of the arbitral tribunal and also provides a reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators, and the High Courts have been assigned the responsibility of framing the rules for determining the fees and the manner of payment. The model fee varies from Rs 45,000 to Rs 30 Lakh (Rupees forty-five to rupees thirty lakh) for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees twenty) Crore (with a sole arbitrator entitled to 25% (twenty-five per cent) extra above the model fee). However, it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed to the determination of fees as per the rules of an arbitral institution.

2. **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors, or other related business relationship not only with the Port but also with any allied entity thereof. Thus, the earlier practice of appointing serving officers of Port as arbitrator is no more legal.

3. **Disclosures:** An arbitrator who is approached for an appointment is obligated to disclose as per the Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

   a) Conflict of Interest: Existence, either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.

   b) Time constraints: An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

4.10.2 Fast-tracking Arbitration in India

1. **Award within 12 (Twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under exceptional circumstances where all parties give their consent to such extension of time. Where the award is not made within the statutory period, the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause, and the court, in its discretion, may impose the following penalties depending on the facts and circumstances of the case:

   a) Reduce the fees of arbitrators by up to 5% (five per cent) for each month of delay.

   b) Substitute one or all the arbitrators.

   c) Impose actual or exemplary costs on any of the parties.

2. **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.

3. **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast-track arbitration is to be made out within six months.

   a) Arbitral Tribunal can decide to follow documents only Arbitration, especially in case of lowvalue arbitrations, to fast track the arbitration.

   b) Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The parties shall determine the quantum of such additional fees.

   c) The salient features of the fast-track arbitration are:

      i) Disputes are to be decided based on written pleadings only.

      ii) The arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.

      iii) Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.

      iv) The parties are free to decide the fees of the arbitrator(s).

4. **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

4.10.3 Procedural and Jurisprudence simplified.

1. **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

2. **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.

3. **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction.' Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.

4. The act made applicable on International Commercial Arbitration with even seat outside India: Part I of the act has been made applicable for limited purposes (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India; however, giving freedom to exclude the applicability the Act by agreeing to this effect:

   a) Seeking interim relief from courts [section 9]

   b) Seeking the assistance of the court in taking evidence [section 27]

   c) Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]

   d) Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

5.0 The Mediation Act, 2023

1. This Mediation (The Act would be fully notified at a later date. Hence some of the provisions like registration of mediators, and MSPs/ MCI may get activated later) Act, 2023 applies to mediations conducted in India, particularly when the 'mediation agreement/ clause' provides that any dispute shall be resolved in accordance with the provisions of this Act; or when in a commercial dispute one of the parties to the dispute is the Central Government or a State Government or agencies, public bodies, corporations, and local bodies, including entities controlled or owned by such Government. Thus, it specifically covers dispute resolution in Public Procurement.

2. The Act provides for a Mediation Council of India (MCI) to be created and an enabling provision for registration of Mediation Service Providers (MSP) by MCI. The parties are free to determine the mediation's venue, manner, and language.

3. Like arbitration agreement, a mediation agreement shall be in writing recorded in any document (including the Contract) signed by the parties; or as exchange of communications or any pleadings in any proceedings in which existence of mediation agreement is alleged by one party and not denied by the other. However, unlike the Arbitration and Conciliation Act, the Mediation Act does not prevent a party from agitating a dispute in Court before seeking a resolution; hence, the nature of Mediation is voluntary. Nevertheless, if Mediation is provided contractually and, instead, one party seeks recourse to courts, the other party can inform the Court of the mediation agreement and request a reference to Mediation.

4. While the Act does not require the mediator to have any qualifications, it dictates that a mediator of foreign nationality shall possess such qualifications, experience, and accreditation as may be specified by the MCI. The Act provides for registration of Moderators with the Mediation Council of India (MCI); or empanelled by a court-annexed mediation centre; or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987; or empanelled by a mediation service provider (MSP) recognised by MCI. Either the parties mutually agree to select an agreed candidate for mediator or else they may refer the mediation to Institutional Mediation through MSP registered with the MCI. MSP would then provide a mediator considering the suitability and preference of the parties.

5. The Act provides for confidentiality of Mediation Proceedings, and for declaration of mediators regarding 'Conflict of Interest' if any. Mediation can also be done online/ virtual mediation, provided the integrity and confidentiality of the process is maintained.

6. Mediator only facilitates the party to arrive at a mutually agreed resolution but does not have authority to impose any suggestion.

7. There is a time limit of 120 days (extendable by 60 days), after which the Mediator can provide a non-resolution report to the party or the MPS, as the case may be. Otherwise, if successful, moderator provides a Mediation Settlement Agreement (MRA) to the parties or MSP. A jointly signed MSP, countersigned by the Mediator becomes a decree of the court and can be enforced in the court like a decree.

8. The moderator of the dispute under resolution cannot subsequently be associated with any resolution process or with either party in the same dispute in any forum, judicial or otherwise.

6.0 Salient Features of Competition Act, 2002

Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

1. The Preamble of the Competition Act, 2002, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

2. The Act was amended by Competition (Amendment) Act, 2007 and again by Competition (Amendment Act), 2009.

3. In India, Competition Commission of India ("CCI"), formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extraterritorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy, power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

4. Section 8 dealing with composition of Commission provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory, and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.

5. The National Company Law Appellate Tribunal (NCLAT) (W.E.F from June 2017, as per The Competition (Amendment) Act 2017) is the body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI

or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.

6. Any person aggrieved by the order or decision of the CCI may prefer an appeal to the NCLAT within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53(T) lies before the Supreme Court of India from the orders of the NCLAT within a period of 60 (sixty) days from the date of communication of the order by the NCLAT.

7. CCI may initiate an inquiry:

   a) On its own motion based on information and knowledge in its possession or

   b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or

   c) On receipt of a reference from the Central Government, a State Government, or a statutory authority

8. The Act provides for Director General (DG) office as a separate investigative wing to assist the CCI. The DG investigates the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.

9. The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.

10. Under Section 21 of the Act, any statutory authority can suo motto or on request of a party during a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

11. The key provisions of the Competition Act include:

a) Section 3 of the Competition Act, 2002 deals with anti-competitive agreements;

b) Section 4 of the Competition Act, 2002 which discusses the abuse of dominance;

c) Sections 5 and 6 of the Competition Act, 2002 deal with the regulation of combinations.

12. The term 'agreement' has been defined broadly in the Competition Act. It extends to a mere 'arrangement,' 'understanding' or 'action in concert,' none of which need be in writing or enforceable by law.

13. Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.

14. Section 3(3) of the Competition Act deals with horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers the following:

a) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise.

b) The practice carried out by any association of enterprises or association of persons.

c) Decision taken by any association of enterprises or association of persons.

15. Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements that are presumed to cause an appreciable adverse effect on competition (AAEC) in India.

a) Agreements regarding Prices

b) Agreements regarding Quantity / Quality

c) Market Allocation

d) Bid Rigging

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

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

18. The Act defines bid rigging, and it covers agreements having the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

    a) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence.

    b) Bid Rotation

    c) Bid Suppression

    d) Complementary Bidding

    e) Subcontracting arrangements

    f) Market Allocation

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

    a) Declare Anticompetitive Agreements Void

    b) Impose Heavy Penalties

        i) Penalty can be up to 10% (ten per cent) of the average turnover for the last three preceding fiscal years upon each of such persons or enterprises which are parties to bid-rigging.

        ii) Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten per cent) of its turnover for each year of the continuance of such agreement, whichever is higher.

    c) Order the parties to Cease & Desist.

    d) Modification of agreements

    e) Remedy Damage to reputation.

    f) Fix Individual Liability

    g) Grant Interim orders

    h) Any other order as CCI deems fit.

20. **Who can file the information**: Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

a) Any person, consumer, association, or trade association can file information before the Commission.

b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.

c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

21. **What are the issues on which information can be filed?**

a) The information can be filed on issues like anti-competitive agreements and abuse of dominant position or a combination.

b) Class of consumers.

22. **The fee -**

a) Rupees 5000/- (Five thousand only) in case of an individual, or Hindu undivided family (HUF), Non-Government Organisation (NGO), Consumer Association, Co-operative Society, or Trust duly registered under the respective Acts,

b) Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crore, and

c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

7.0 Salient Features of the Whistle Blowers Protection Act, 2011

Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

1. The Act seeks to protect whistle blowers, i.e., persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

2. Any public servant or any other person including a non-Governmental organization may make such a disclosure to the designated agencies i.e., Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.

3. The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850andCommissions of Inquiry Act, 1952.

4. Similarly, the Amendment Act 2015 prohibits the reporting of a corruption-related disclosure if it falls under any 10 (ten) categories, including information related to:

   a) The sovereignty, strategic, scientific, or economic interests of India or the incitement of an offence

   b) Records of deliberations of the Council of Ministers

   c) That which is forbidden to be published by a court or if it may result in contempt of court;

   d) A breach of privilege of legislatures;

   e) Commercial confidence, trade secrets, intellectual property (if it harms a third party);

   f) That relayed in a fiduciary capacity;

   g) That received from a foreign Government;

   h) That which could endanger a person's safety etc.;

   i) That which would impede an investigation, etc.;

   j) Personal matters or invasion of privacy.

5. However, if information related to b), e), f), and j) above is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

   a) Any public interest disclosure received by a Competent Authority will be referred to an authorised authority if it falls under any of the prohibited categories above. This authority will decide on the matter, which will be binding.

   b) The Identity of the Complainant must be included in the Complaint or the Disclosure. However, the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the enquiry.

   c) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name

being revealed, in that case, the complainant shall provide all documentary evidence in support of is complaint to the Designated Agency.

d) Any person who negligently or with malafide reveals the identity of the complainant shall be punished with imprisonment up to three years and a fine not exceeding Rs. 50,000 (Rupees fifty thousand).

e) Similarly, any disclosure made with mala fide and knowingly that it was false, or misleading shall be punished with imprisonment up to two years and a fine not exceeding Rs. 30,000 (Rupees thirty thousand).

f) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.

g) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, with respect to matters like receiving evidence, issuing commissions, discovery, and production of any document, etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure (CrPC), 1973,(This law has been replaced by Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 from 1st July 2024) and Indian Penal Code (IPC) 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024).

h) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.

i) However, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before.

j) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had disclosed under this act.

k) If any person is victimised or likely to be victimised on the grounds mentioned above, he may contact the Designated Agency, and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore the status quo ante with respect to the Public Servant who has

made a disclosure. Also, the Designated Agency can pass directions to protect such complainants.

l) If any Head of the Department has committed an offence under this act unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

m) This Act extends to all the Companies as well. When a company has committed any offence under this act, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

n) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix-GM-S2/A3

3 Electronic Procurement and e-Auction

Electronic Procurement (e-Procurement) and e-Auction

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

1.0 Electronic procurement (e-procurement)

E-procurement is the use of information and communication technology (especially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory, and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014, prescribed mandatory publishing of tenders through the e-procurement mode for tenders valued above Rupees two lakh.

2.0 Service Provider:

A service provider is engaged to provide an e-procurement system covering the following:

a) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;

b) The system archives the information and generates reports required for the management information system/decision support system;

c) A helpdesk is available for online and offline support to different stakeholders;

d) The system arranges and updates the Digital Signature Certificate (DSC) for Departmental users

e) Different documents, formats, and so on are available for e-procurement systems.

3.0 Process:

In e-procurement, all processes of tendering have the same content as in normal tendering and are executed once the necessary changes have been made online by using the DSC as follows:

a) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from the e-procurement service provider's portal. In e-procurement, the tender fee, EMD, and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded, without which the bid may not be opened. In future, such payments may be allowed online also;

b) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Port with DSC. After the creation of the tender, a unique "tender ID" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified as four officers (two from the Port and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. The downloading of the tender may start immediately after the e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start the next day after the e-publication of NIT. In the case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

c) **Registration of bidders on the portal:** To submit the bid, bidders must register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas the DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement, which contains all the terms and conditions of NIT, including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information, and documents furnished by the bidder online;

d) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I and price bid in cover-II. To enable system-generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an online undertaking that if the information/declaration/scanned documents furnished with respect

to eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted online (by scanning) in electronic format while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

e) **Corrigendum, clarifications, modifications, and withdrawal of bids:** All these steps are also carried out online mutatis mutandis, the normal tender process;

f) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of online tender creation. Relevant bidders can simultaneously take part in the bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the technocommercial bid opening and a price comparative statement in case of price bid opening, which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening are uploaded on the portal, and shortlisted firms are also informed through system-generated emails and SMS alerts – after shortlisting of the technocommercially acceptable bidders;

g) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in the case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tender process;

h) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tender process, based on system-generated reports and comparative statements;

i) **Award of contract:** The award of the contract is done offline, and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT

j) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an epayment system without interest at the earliest after the expiry of the final bid validity period but not later than 30 (thirty) days after the conclusion of the contract. The EMD of the successful bidder should be returned after receipt of performance security, as requested in the contract.

4.0 Disposal through e-Auction

4.1. Contractual Legal Aspects of Auction Sale of Scrap

1. Ministry/ Departments should decide the calendar for holding auctions/ tenders for groups of lots. A summary of this Auction Schedule is given publicity in Newspapers and on websites, indicating how to obtain/ download Auction Catalogues. For each Auction, a Catalogue is prepared containing details of the Schedule of Lots in the Auction, as well as General and Special Terms and Conditions of Sale (GTC and STC). In contractual terms, publishing an auction catalogue for the sale of scrap is equivalent to NIT/ MTD in tender for procurement and forms the basis of bids by the purchasers. In e-Auction, the General Conditions of Sale are available on the website, and the Special Conditions of Sale for each lot are hyperlinked to the Lot Description. In the case of Tender/ Physical Auctions, the Catalogue contains these in printed format.
2. In an auction, the bidders keep bidding higher, and the highest bid is accepted. In such a case, a Bid-Sheet is immediately signed by the Seller and Bidder's representative, which, along with the delivery order, serves as a legal contract document. In e-auction, the Bid Sheet is generated with the DSCs of the Buyer and Seller.

4.2. Legal Status of e-Auction

e-Auction through E-Auction Service Provider (eASP) is a triangular contract. eASP is a sub-agent of the seller through a standing contract entered between them, which is subject to the general terms and conditions (GTC) of eASP. eASP is also a sub-agent of the successful buyer through a standing contract between them, which is subject to Buyer Specific Terms and Conditions (BSTC). eASP gets a commission of a fixed percentage of sale value from the purchaser directly – which is deducted from the amount payable to the seller. The e-auction sale is governed by GTC, BSTC and Special Terms and& Conditions (STC) of the e-auction. In case of conflict or differences among any provisions of GTC, BSTC and STC, the provisions of STC would prevail. Normally, successful purchasers pay all monies to eASP, who, in turn, transfer it to the seller. But the seller may, if desired, negotiate with eASP to accept such payments directly from the purchaser.

4.3. Creating an Auction Event: Auction Catalogue

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

   a) Auction number;

   b) Auction Opening date and time,

   c) Auction Closing date and time;

   d) Type of Auction Ending: Close Ended/ Open Ended

   e) Max Auto Extensions Allowed (five to ten)/ Duration of Auto Extensions (90 Secs– ninety seconds)

   f) Auction Catalogue Number and Date

   g) Inspection from date;

   h) Inspection closing date;

   i) Seller/Unit name;

   j) Address; Contact details;

   k) Details of the contact person;

   l) Details of ED and Sales Tax (GST) in each Lot and TCS (including Surcharge and Edu Cess) for all lots;

   m) Whether Subject to Acceptance (STA) is applicable for bids within (10% (ten per cent) or any other percentage) of the Reserve Price

   n) List of lots to be included:(Lot Description is hyperlinked to relevant details containing particular terms of lifting, etc.)

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

2. The fixed reserve price must also be uploaded on the portal for each lot, which is kept confidential. Bids below the reserve price up to a percentage can be accepted on an STA basis. eASP can post the auction details, but to maintain the sanctity of

the reserve price, the seller should do so through his login and password. The bidder's queries before the auction will reach the seller by e-mail and can be answered online. The seller will not be allowed to edit any item once the auction starts. To attract bidders to the auction to get a higher price, the seller should describe items in detail and include information such as the condition and size of the item. The more information is provided, the more bidders will bid with confidence. A photo can also be uploaded. Generally, auctions with images have higher sell-throughs. Many buyers like to Appendix 3: Electronic Procurement (e-Procurement) and e-Auction browse through the eASP categories, and therefore, listing the item in the appropriate category increases the likelihood of interested bidders viewing it.

4.4. Buyer Eligibility

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

4.5. Conduct of Auction

1. The seller cannot close/cancel an auction once it starts. It can be cancelled/ amended prior to the start of the auction by requesting cancellation. The following information will be present on the auction floor web page:
    a) Opening date and time,
    b) Closing date and time,
    c) Item number,
    d) Item name, hyper-linked to relevant details containing duties, etc., /particular terms of lifting, etc.;
    e) Quantity and unit of measurement;
    f) Location of material/item;
    g) Last bid or basic price, if any;
    h) Bidders' bid in Rs. /unit
    i) Bid history.
2. The closing time of an auction shall automatically be extended by the period indicated in the Auction Catalogue for all auctions if the bid continues (e.g., in case

the closing time is 5.30 pm on any particular date and if a bidder bids at 5.29 pm then the closing time will be automatically extended). The maximum number of auto extensions is also specified.

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

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

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

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

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

8. If the reserve price is not met at the close of the auction, the auction closes without a winning bidder. At the seller's request, eASP will arrange for the inclusion of the unsold item in the next auction.

4.6. Earnest Money Deposit

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

4.7. Payment of Balance Sale Value (BSV)

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

a) Commission percentage as per STC/ GTC/ BSTC to be paid in favour of eASP by way of demand draft/pay order;

b) The balance amount (after deducting the EMD and amount payable to eASP) plus applicable GST/duties, income tax and other charges, if any, must be paid in favour of the authority mentioned in the auction catalogue;

c) In case of delay, an overdue payment charge @ one per cent per week or part thereof will be charged up to two weeks only and thereafter, the EMD will stand forfeited without any notice

d) Tax Collected at Source (TCS) at the applicable percentage (presently@ one per cent) of the gross value (material value + excise duty + GST + any other applicable taxes/duties/cess, etc.) may be deducted by the purchaser, and a TDS certificate may be given. A surcharge of 10% (ten per cent) on TCS and a further Education cess of 3% (three per cent) is leviable on the TCS+ Surcharge.

4.8. Delivery Order

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

a) Lot number;
b) Description of material;
c) Purchaser's name and address;
d) Approximate quantity in the lot;
e) The rate at which sold;
f) Value realised;
g) Reference to the cash remittance note, under which the value was remitted to the nominated cashier;
h) Chief cashier or treasurer's receipt note and date;
i) The amount of loading charges was recovered by the storekeeper.

Note: Information sought in S. No a) to h) shall be filled in by eASP in tabular form (Columns 1 to 8). Information pertaining to S.No. i) (Column 9) shall be filled by the storekeeper.

Appendix-GM-S2/A4

4 Management of Public Procurement Function

(Refer para 7.5.1)

1.0 Organisation of Procurement Function

1. The procurement function should be so organised that procurement executives get an opportunity to develop expertise in a particular market segment, and internal customers may have to deal with only a single point of interface. Thus, work distribution in the Port may be segmented based on markets, but there may be nodal officers who provide a single window interface to internal clients.
2. In Port, besides procurement activities, there are also ancillary activities. In a small Port, these ancillary activities may be distributed among various executives. Ancillary procurement activities are:
   a) Administration and management services;
   b) Human resources development and training;
   c) Policy and guidelines;
   d) Procurement performance measurement and management reporting
   e) IT systems and master data management;
   f) Advertising, tender document sale/ issue/receipt, tender boxes, tender opening, custody of samples;
   g) Direct contracting/local purchase;
   h) Liaison and progressing;
   i) Supplier relations management and registration;
   j) Legal and arbitration matters.

2.0 Management Reporting

2.1 Procurement Key Performance Indicators and Management Reporting

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

2.2 Management Reports for Monitoring of Procurement Function

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

   a) Receipt of indent;

   b) Issue of tenders;

   c) Finalisation of tender decision;

   d) Signing of contracts;

   e) Successful performance of the contract; and

   f) Payments for supplies/works/services.

2. This will highlight stages where urgent intervention is required for efficient procurement to the management. The Port would compile these reports. Templates for management reports are given in *Appendix 5: Templates for Management Reports and KPIs*.

3.0 Record Keeping

3.1 Procurement Records

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

a) **Item/Asset Master Database**: The heart of the procurement system is the item/asset master database. It contains complete data about an item or asset handled in the past. It contains code number, category, description long/short, specification, drawings, a trade group of vendors, book rate, estimated annual consumption, replenishment data; inventory parameters (buffer stock, safety stock levels) – to the extent relevant to goods, works or services;

b) **Vendor/Contractors Database**: Contains vendor/contractor information such as name, address; small scale and minority enterprise categorisation; registration data

(registration code, trade groups, monetary limits of registration, NSIC registrations); past performance ratings;

c) **Procurement Register**: Key information at various stages of procurement operations, from receipt of indents to the issue of the contract, is recorded (manually or electronically) in the procurement register. The Procurement register thus enables ascertaining the status of a particular procurement and also overall monitoring of efficiency and throughput of procurement operations;

d) **Procurement Order Guard Register**: An indexed register with only machine-numbered stubs of pages (instead of full pages) is used for this purpose. One ink-signed copy of all orders issued by the Port is compulsorily pasted into these stubs in chronological order. This is the most authentic record, which is used as a guard and ultimate reference against any tampering/falsification/misreporting of procurement orders

e) **Procurement Order Progress Register**: It contains the record of all procurement orders issued and the progress of supplies against these contracts. It contains procurement order numbers, vendor/contractor names, a brief description of procurement, the total value of the order, delivery dates, actual dates of supply, and so on.

Appendix-GM-S2/A5

5 Templates for Management Reports and KPIs

(Refer Appendix 4, Para 7.5.1)

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

S. No.	Item/Work Code and Description	Quantity, Required/ Indented & Value	Date of Receipt in Port	Date of Floating Tenders	Remarks

2. Delays by more than one month in finalising tenders over the ideal time (Para 7.6.1)

S. No.	Tender Number & Opening date	Item/Work Code and Description	Quantity Value &	Date Indent Received in Procuring Entity	Delay as per Ideal Time	Likely Date of Contract/ Remarks

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

Serial No.	Tender No. & Opening Date	Item/Work Code and Description	Quantity & Value	Reasons for Discharge/ Retendering	Level of Approval	Is it a Case of Repeat Retendering?	Actions Taken to Avoid Repetition

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

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

5. Delays by over three months in Performance of Contract

Po No & Dt.	Item/Work Code and Description	Contractor Name /Code	Original Delivery /Performance Period/ Date	Delay in Weeks	Indicative Delivery/ Performance Date	Proposed Action/ Remarks

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

Po No & Dt.	Item/Work Code and Description	Vendor Name /Code	Date of Performance/ Delivery	Due Date of Payment as Per Contract	Date of Signing Payment Order Voucher	Likely Date of Payment	Proposed Action/ Remarks

7. Top 10 Contractors during the current year

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

8. KPIs during last month/quarter/fiscal year

Workload & Throughput	Number/ Value/ Ratio
Number and Value of Indent pending contract placement	
Number and value of indents received during the month	
The number and value of tenders floated during the month.	
Number and value of tenders finalised during the month	
Number and value of contracts signed during the month	
Number and value of payments made for deliveries/performance during the month	
The efficiency of the procurement process	
Productivity– number and value-wise tenders finalised/on hand per head of staff	

Average time taken for award decision for OTE, GTE, LTE, PAC/ OEM/ STE categories of procurement	
Proportions of tenders on PAC, STE basis with reference to the total number/value of tenders	
Proportions of tenders on limited/selective tendering with reference to the total number/value of tenders	
The proportion of tenders through e-procurement with reference to the total number/value of tenders	

Appendix-GM-S2/A6

6 Fundamental Principles of Public Procurement

1.0 Fundamental Principles of Public Procurement

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

i) Transparency principle;

ii) Professionalism principle;

iii) Broader obligations principle;

iv) Extended legal principle; and

v) Public accountability principle

1.1. Transparency Principle

All procuring authorities are responsible and accountable for ensuring transparency, fairness, equality, competition, and appeal rights. This involves simultaneous, symmetric, and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award, and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), and equal opportunities (absence of discrimination) in processes. In essence, the Transparency Principle also enjoins upon the Procuring Authorities to do only that which they professed to do as pre-declared in the relevant published documents and not to do anything that had not been so *declared.'* As part of this principle, all procuring entities should ensure that offers are invited following a fair and transparent procedure and ensure publication of all relevant information on the Government e-Marketplace (GeM) and GeM-Central Public Procurement Portal (CPPP).

1.2. Professionalism Principle

1. As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness, and integrity in the procurement process. They must avoid wasteful, dilatory, and

improper practices violating the Code of Integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this Manual. They should, at the same time, ensure that the methodology adopted for Procurement is reasonable and appropriate for the cost and complexity and that it effectively achieves the planned objective of the Procurement. As part of this principle, the Government may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

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

> *"Rule 144. Fundamental principles of public buying: Fundamental principles of public buying. (for all procurements including procurement of works). — Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.*

3. The procedure to be followed in making public procurement must conform to the following yardsticks (Rule 144 GFR, 2017): -

   a) offers should be invited following a fair, transparent, and reasonable procedure;

   b) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

   c) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

1.3. Broader Obligations Principle

1. Over and above transparency and professionalism, the procuring authorities also have the responsibility and accountability to conduct public Procurement in a manner that facilitates the achievement of the broader objectives, social policies and programme objectives (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job, and employment creation, and so on) of the Government - to the extent these are specifically included in the 'Procurement Guidelines'. These policies are detailed in para 1.11 below.

2. To support social policies, reservation of Procurement of specified goods from MSEs, weaker sections, backward regions, and reservation of Procurement of certain goods from MSEs,

3. To strengthen local industry and job/ employment creation, preferential Procurement of locally manufactured goods or services (Rule 153 (iii) of GFR, 2017) and support to Startup enterprises (Rule 170(i), 173 (i) of GFR, 2017);

4. To achieve programme objectives, reservation of Procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations;

5. On the grounds of defence of India or matters directly or indirectly related thereto, including national security, impose restrictions, including prior registration and/ or screening, on Procurement from bidders from, or bidders having commercial arrangements with an entity from, certain country or countries, or a class of countries. Rule 144(xi) of GFR, 2017

6. Facilitating broader objectives of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People with Disabilities, etc., Procurement policies and procedures must comply with accessibility criteria that the Government may mandate from time to time. (Accessibility criteria for buildings and facilities are requirements that ensure that people with disabilities can access and use the buildings and facilities without barriers. These are contained in the National Building Code (NBC), and the International Standards Organization (ISO) 21542:2011. "Accessible India Campaign (Sugamya Bharat Abhiyan)" is a nation-wide Campaign launched by Department of Empowerment of Persons with Disabilities (DEPwD) of Ministry of Social Justice & Empowerment to provide universal accessibility to persons with disabilities)

1.4. Extended Legal Responsibilities Principle

Procuring authorities must fulfil additional legal obligations in public Procurement, over and above mere conformity to the mercantile laws (which even private sector procurements must comply with). The Constitution of India has certain provisions regarding fundamental rights and public Procurement. Courts have, over time, taken a broader view of public Procurement as a function of the 'State,' interpreting these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public Procurement in relation to the manner of decision-making with respect to fundamental rights, fair play, and legality. Similarly, procuring authorities also have the responsibility and accountability to comply with the laws relating to Governance Issues like the Right to Information (RTI) Act and Prevention of Corruption Act, and so on. Details of such extended legal obligations are given in Appendix-GM-S2/A2.

1.5. Public Accountability Principle

1. Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes.

2. The Port, at each stage of procurement, must therefore, place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need (Rule 144 (viii), GFR 2017)

3. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies on demand. The Port shall, therefore, maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order. The files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time.

Appendix-GM-S2/A7

7 Preference to Make in India

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

1. **Purpose**

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

a) *'L1'* means the lowest tender or lowest bid, or the lowest quotation received in a tender, tender process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

b) *'Local Content'* means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

Explanatory notes for calculation of local content given above

i) Imported items sourced locally from resellers/ distributors shall be excluded from calculation of local content.

ii) The license fees/ royalties paid/ technical charges paid out of India shall be excluded from local content calculation

iii) Procurement/ Supply of repackaged/ refurbished/ rebranded imported products as understood commonly shall be treated as reselling of imported products and shall be excluded from calculation of local content. The definition of repackaged/ refurbished/ rebranded imported products is as follows:

1) 'Refurbishing' means repair or reconditioning of an imported product does not amount to manufacture because no new goods come into existence.

2) 'Repackaging' means repacking of imported goods from bulk pack to smaller packs would not ordinarily amount to manufacture of a new item.

3) 'Rebranding' means relabelling or renaming or change in symbol or logo/ makes or corporate image of a company/ organization/ firm for an imported product would amount to rebranding.

iv) To ensure that imported items sourced locally from resellers/ distributors are excluded from calculation of local content, procuring entities to obtain from bidders, the cost of such locally-sourced imported items (inclusive of taxes) along with break-up on license/ royalties paid/ technical expertise cost etc. sourced from outside India/ for items sold by bidder as reseller, OEM certificate for country of origin to be submitted.

v) For contracts involving supply of multiple items, weighted average of all items to be taken while calculating the local content.

c) *'Margin of purchase preference'* means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) per cent.

d) *'Nodal Ministry'* means the Ministry or Department identified pursuant to this order with respect to a particular item of goods or services or works.

e) *'Procuring entity'* means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

f) *'Works'* means all works as per Rule 130 of GFR- 2017 and will also include *'turnkey works.*

1A. Special treatment for items covered under PLI Scheme

The manufacturers manufacturing an item under PLI scheme shall be treated as deemed Class II local supplier for that item unless they have minimum local content equal to or higher than that notified for Class-I local supplier for that item, provided the manufacturer has received incentive from the concerned PLI Ministry for the item. The above shall be applicable for the specific time period only, as notified by concerned PLI Ministry.

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

a) In procurement of all goods, services, or works in respect to which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only a 'Class-I local supplier' shall be eligible to bid, irrespective of purchase value.

b) Only 'Class-I local supplier' and 'Class-II local supplier' shall be eligible to bid in procurements undertaken by procuring entities, except when a Global tender

enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers.' In procurement of all goods, services or works not covered by sub-para 2-a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

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

2A. **Mandatory sourcing of items, with sufficient local capacity and competition, from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Service Tenders**

a) The items, notified as having sufficient local capacity and competition, shall mandatory be sourced from Class-I local suppliers in SI/ EPC/ Turnkey Contracts/ Services tenders. This provision will be applicable only for those items which have been notified by the Nodal Ministry as Class-I i.e. having sufficient local capacity and competition, with specific HSN codes.

b) Notwithstanding above, if in any project, it is considered that it is not practically feasible to source such items from Class I local suppliers, it may take relaxation from such stipulation with the approval of Secretary of the administrative Ministry/ Department concerned or with the approval of the Competent Authority specified by the Administrative Ministry/ Department, on case-specific basis.

3. **Purchase Preference**:

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

b) In the procurements of goods or works, which are covered by para 2-b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier,' as per following procedure: *Note:*

1. If the procuring entity negotiates with the L1 bidder, who is not a ClassI Local Supplier, the margin of purchase preference (L1+20%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible Class-I Local

Suppliers shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 50% quantity.

2. *Since as per sub-para iii) below, MII order is applicable 'where the bid is evaluated on price alone' – MII purchase preference would not be applicable where evaluation is based inter-alia on non-price criteria, e.g., QCBS or FBS in Services and Works.*

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

ii) If the L1 bid is not a 'Class-I local supplier', 50 (fifty) per cent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) per cent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference (L1+20%) and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case the lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference (L1+20%) shall be invited to match the L1 price for the remaining quantity and so on, and the contract shall be awarded accordingly. In case some quantity out of the 50% (for the eligible Class-I Local Suppliers) is still left uncovered, then such balance quantity may also be ordered on the L1 bidder.

iii) In the procurements of goods or works, which are covered by para 2-b) above and which are not divisible in nature, and in the procurement of services *where the bid is evaluated on price alone*, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

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

2) If L1 is not a 'Class-I local supplier', the lowest bidder among the 'Class-I local suppliers' will be invited to match the L1 price subject to the Class-I local supplier's quoted price falling within the margin of purchase preference(L1+20%), and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.

3) In case the lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference (L1+20%) shall be invited to match the L1 price, and so on, and the contract shall be awarded accordingly. In case none

of the 'Class-I local suppliers' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

4) "Class-II local supplier" will not get a preference for any procurement undertaken by procuring entities.

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

i) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers who would be awarded the contract should be all and only 'Class I Local suppliers.'

ii) In other cases, 'Class II local suppliers' and 'Non-local suppliers' may also participate in the tender process along with 'Class I Local suppliers' as per provisions of the Order.

iii) If 'Class I Local suppliers' qualify for the award of contract for at least 50 (fifty) per cent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the tender documents. iv) However, in case 'Class I Local suppliers' do not qualify for the award of contract for at least 50 (fifty) per cent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non-local suppliers' provided that their quoted rate falls within 20 (twenty) per cent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) per cent of the tendered quantity.

v) Only those 'Class-I local suppliers' would be eligible for purchase preference whose quoted rates fall within 20 (twenty) per cent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. First, purchase preference must be given to the lowest quoting eligible 'Class-I local supplier.' If the lowest quoting 'Class-I local supplier' does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to the next higher eligible 'Class-I local

supplier,' and so on. In case the quantity thus allocated to eligible 'Class-I local suppliers' is short of 50% of the tendered quantity, then this shortfall quantity may be distributed among all other qualified bidders as per award criteria stipulated in the tender documents.

vi) To avoid any ambiguity during the bid evaluation process, the procuring entities may stipulate their own tender-specific criteria for the award of contracts amongst different bidders, including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in the sub-paras above.

4. **Exemption of small purchases**: Notwithstanding anything contained in para 2 above, procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

a) **Exemption in sourcing of spares and consumables of closed systems**: Procurement of spare parts, consumables for closed systems and Maintenance/ Service contracts with Original Equipment Manufacturer/ Original Equipment Supplier/ Original Part Manufacturer shall be exempted from this Order.

5. **Minimum local content**: The 'local content' requirement to categorize a supplier as a 'Class-I local supplier' is a minimum of 50 (fifty) per cent. For 'Class-II local suppliers,' the 'local content' requirement is a minimum of 20 (twenty) per cent. Nodal Ministry/ Department may prescribe only a higher percentage of the minimum local content requirement to categorize a supplier as a 'Class-I local supplier'/ 'Class-II local supplier.' For the items for which the Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) per cent and 20 (twenty) per cent for 'Class-I local supplier'/ 'Class-II local supplier' respectively. It may be noted that local content is not related to the nationality of the firm – a foreign-owned firm may also become a Class-I or Class-II local supplier by adding local value addition.

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

7. **Government E-marketplace**: In respect of procurement through the Government Emarketplace (GeM), shall, as far as possible, specifically mark the items that meet the minimum local content while registering the item for display and shall, wherever

feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

8. **Verification of local content**:

a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate the percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier,' as the case may be. They shall also give details of the location(s) at which the local value addition is made.

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

c) The bidder shall give self-certification for local content in the quoted item (goods/ works/ services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice. For cases where it is not possible to provide certification by Cost/ Chartered Accountant at the time of execution of project, the supplier shall be permitted to provide the certificate for local content from Cost/ Chartered Accountant after completion of the contract, within the limit acceptable to the procuring entity. In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed. However, contract once awarded shall not be terminated on this account.

d) Decisions on complaints relating to the implementation of this Order shall be made by the competent authority that is empowered to investigate procurement-related complaints relating to the procuring entity.

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

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

g) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules, for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law. The Department of Expenditure shall issue suitable instructions (please refer to para 3.7 of this manual) for the effective and smooth operation of this process so that:

i) The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry /Department or in some other manner;

ii) On a periodical basis, such cases are consolidated, and a centralized list or decentralized list of such suppliers with the period of debarment is maintained and displayed on the website(s);

iii) With respect to procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.

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

9. **Specifications in Tenders and other procurement solicitations**:

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

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

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

d) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the tender document is a restrictive and discriminatory

practice against local suppliers. If foreign certification is required to be stipulated because of the nonavailability of Indian Standards and/or for any other reason, the same shall be done only after written approval of the Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

10. **Reciprocity Clause**:

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

b) Entities of countries that the nodal Ministry/Department identifies as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.

c) The stipulation in (b) above shall be part of all tenders invited by the Central Government procuring entities stated in (a) above. All purchases on GeM shall also necessarily have the above provisions for items identified by the nodal Ministry/ Department.

d) State Governments should be encouraged to incorporate similar provisions in their respective tenders.

e) The term 'entity' of a country shall have the same meaning as under the FDI (Foreign Direct Investment) Policy of DPIIT as amended from time to time.

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

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

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

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

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

13. **Manufacture under license/ technology collaboration agreements** with phased indigenization:

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

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

14. **Powers to grant exemption** and to reduce minimum local content:

a) The Administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval

of their Minister-incharge, may, by written order, for reasons to be recorded in writing,

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

b) The Administrative Department, while seeking exemption under this para, shall certify that such an item(s) has not been notified by Nodal Ministry/ Department concerned under para 3 above.

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

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

16. **Standing Committee**:

a) A standing committee is hereby constituted with the following membership:

i) Secretary, Department for Promotion of Industry, and Internal Trade-Chairman

ii) Secretary, Commerce-Member

iii) Secretary, Ministry of Electronics, and Information Technology-
iv) Member Joint Secretary (Public Procurement), Department of Expenditure-
v) Member Joint Secretary (DPIIT)-Member-Convenor

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

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

a) shall oversee the implementation of this order and the issues arising from it and make recommendations to Nodal Ministries and procuring entities.

b) Shall annually assess and periodically monitor compliance with this Order.

c) Shall identify Nodal Ministries and the allocation of items among them for the issue of notifications on minimum local content.

d) May require the furnishing of details or returns regarding compliance with this Order and related matters.

e) May during the annual review or otherwise, it may assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization, or increase in public expenditure and suggest remedial measures.

f) May examine cases covered by sub-para 13 above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization.

g) May consider any other issue relating to this Order that may arise.

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

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

20. Please refer to the FAQs related to the PPP-MII order issued by DPIIT, placed in Annexure 28 of Sec-1.

Appendix-GM-S2/A8

8 Restrictions on Entities from a Class of Countries

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

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

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

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

   a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The information on Competent Authority is given in sub-para 10 below.

   b) Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country that shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in para 10 below. Please also refer to sub-para 5 below.

   c) The requirement of registration for cases covered by para (a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by para (b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.

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

3. Applicability

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

a) to all Autonomous Bodies;

b) to public sector banks and public sector financial institutions;

c) to all Central Public Sector Enterprises;

d) to all procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings; and

e) Union Territories, National Capital Territory of Delhi, and all agencies/ undertakings thereof.

f) The Order is not applicable:

i) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

ii) On procurements made by Indian missions and by offices of government agencies/ undertakings located outside India.

iii) On bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs (https://mea.gov.in/Lines-of-Credit-for-Development-Projects.htm).

iv) On procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.

v) A bidder is permitted to procure raw materials, components, sub-assemblies, etc., from vendors from countries that share a land border

with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting." However, if a bidder proposes to supply finished goods procured directly/ indirectly from vendors from countries sharing a land border with India, such vendors will be required to be registered with the Competent Authority (Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021). (Please also refer to Note below sub-para 4-f) below).

4. **Definitions**

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

b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.

c) "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)

d) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in sub-para 4 below, occurring on or after 23.07.2020.

e) "Bidder (or entity) from a country which shares a land border with India" for the purpose of the Order means:

i. An entity incorporated, established, or registered in such a country; or

ii. A subsidiary of an entity incorporated, established, or registered in such a country; or

iii. An entity substantially controlled through entities incorporated, established, or registered in such a country; or

iv. An entity whose beneficial owner is situated in such a country; or

v. An Indian (or other) agent of such an entity; or

vi. A natural person who is a citizen of such a country; or

vii. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above

f) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Note

1. A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.
2. However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent.

g) Beneficial owner for the purposes of point e(iv) will be as under:

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

Explanation: -

1) "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;

2) "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

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

iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or

entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

iv) Where no natural person is identified under (4) (a) or (4) (b) or (4) (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

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

vi) To determine nationality while assessing the beneficial ownership of the bidder, the nationality mentioned in the beneficiary owner's passport should be considered. In case of the possibility of dual citizenship, nationality on all the passports should be considered through a suitable declaration. If nationality in any of the passports of the person whose beneficial ownership is being assessed is recorded to be from a country sharing a land border with India, the provisions contained under this Order shall apply. Hong Kong and Macau are to be considered as part of China for the purpose of this Order.

5. **Sensitive Sectors/ Technologies** (relevant only for the provisions on ToT arrangements; please refer to sub-para 2-b) above):

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

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

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

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

S. No	Sectors
1	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
2	Banking and Finance including Insurance
3	Civil Aviation
4	Construction of ports and dams & river valley projects
5	Electronics and Microelectronics
6	Meteorology and Ocean Observation
7	Mining and extraction (including deep sea projects)
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

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

b) For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country that shares a land border with India shall require registration.

c) For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country that shares a land border with India, shall require registration.

d) In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included in Schedule III. The Ministry/ Department

concerned shall inform the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to inform the DPIIT/ NSCS of the decision. If DPIIT/NSCS raises any point, it should be considered in future procurements and ongoing procurement for which the waiver was granted need not be interrupted or altered.

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

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

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

7. **Model Clauses/ Certificate regarding compliance**: An undertaking shall be taken from bidders that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such a certificate is given by a bidder whose bid is accepted and found to be false, this would be grounds for debarment and further legal action in accordance with law. Model Clauses and Model Certificates, which may be inserted in tenders / obtained from Bidders, are given in Annexure-33. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs, etc.

8. **Validity of registration**: With respect to tenders, registration should be valid at the time of submission and acceptance of bids. With respect to supplies other than those by tender, registration should be valid at the time of placement of the order. If the bidder was validly registered at the time of acceptance / placement of the order, registration should not be a relevant consideration during contract execution.

9. **Government e-Marketplace**: GeM shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

10. Competent Authority and Procedure for Registration:

a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)[11]. [Notified vide OM No. F.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020]

b) The Registration Committee shall have the following members:

i) An officer not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairperson;

ii) Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and those Departments whose sectors are covered by applications under consideration;

iii) Any other officer whose presence is deemed necessary by the Chairperson of the Committee.

c) DPIIT has laid down the method of application, format, etc., for such bidders as covered by the Order.

d) On receipt of an application seeking registration from a bidder covered by sub-para 2(a) and 2(b) above, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

e) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications.

f) The decision of the Competent Authority to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

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[11] (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para 10 (d) shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in sub-para 3 above but also for procurement by State Governments and their agencies/ public enterprises, etc. No fresh registration at the State level shall be required.

h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

11. Special Cases [In reference to sub-para 2-b) above]:

a. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.

b) This Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

c) This Order will not apply to bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs.

d) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting." However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority[12].

e) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment

[12] Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021.

Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration.

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

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

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

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

d) There is no bar on the contractor from procuring raw material from a firm that has been acquired by another firm belonging to a country that shares a land border with India.

e) **Contract Manufacturing outside India:** If the bidder is getting the subject product manufactured outside India, this is treated as contract manufacturing, and beneficial ownership of the actual manufacturing entity must be verified. If the actual manufacturer does not meet the beneficial ownership criteria – then the bidder must submit DPIIT registration of such manufacturer to participate in the procurement.

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

S. No	Scenario	*Applicability of Rule 144 (xi)*
a)	The equipment/ goods have been purchased or will be purchased from company (manufacturer) from country which shares a land border with India	*The bidder has procured certain goods to offer the requisite services to Port. In such case, the bidder does not fall within the definition of the terms "bidder" as defined under sub-para 4-e) above. Hence, the provisions of the Rule 144 (xi) of GFR, 2017 do not apply to this case.*

b)	By entering into a MOU/ lease agreement with the company (who owns the equipment/ goods) from country which shares a land border with India	*Here, the bidding vendor proposes to hire the services from a company that belongs to a country sharing land border with India. This, prima facie, becomes the case of indirect supply of services by a company that owns the equipment/ goods by introducing an intermediary. The intermediary merely acts as an agent to the company providing services of the equipment. In such a case registration of company owning the equipment and indirectly supplying the services shall require to be registered with the competent authority, thereby requiring the need to fulfil the provisions of Rule 144 (xi).*
c)	By entering into a MOU/ lease agreement with the company (say 'X' who is the present owner of the equipment) from country which does not share a land border with India. The equipment has been purchased from the manufacturer of the company (say 'Y') which is from country that shares a land border with India.	*In this case, the actual supplier of services, prima facie, shall be 'X.' Status of 'X' in this case does not attract the provisions of Rule 144 (xi).*

13. **Illustrative examples** of the applicability of the Restrictions under Rule 144 (xi) of GFR 2017

a) A vendor, say, 'Party A' from India, is procuring an item from their sister company, say, 'Party B,' which is registered in a country that does not share a land border with India. Both the parties, Party A and B, are owned by an entity, say, 'Party C.' Party C does not belong to a country sharing a land border with India. However, Party B has its production facility in a Country sharing a land border with India, and the manufactured item will be procured by Party A from its sister concern, i.e., Party B from the abovementioned production facility. The production unit is wholly owned by Party B. The Party A now claims that the provisions of Rule 144 (xi) of GFR 2017 do not apply on it because both the Party A and B are not:

i) An entity incorporated, established, or registered in such a country, as Party A is registered in India and Party B is registered in a Country not sharing a land border with India;

ii) A subsidiary of an entity incorporated, established, or registered in such a country as they are 100% owned subsidiary of Party C, which is incorporated, registered, and established in a country not sharing a land border with India;

iii) An entity controlled through entities incorporated, established, or registered in such a country as they are 100% owned by Party C, which is registered and established in a country not sharing a land border with India;

iv) An entity whose beneficial owner is situated in such a country as their beneficial owner is Party C;

v) An Indian (or other) agent of such an entity; vi) A natural person who is a citizen of such a country;

vi) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above. Though it has a wholly owned subsidiary in a country that shares a land border with India but is not a JV or consortium (subsidiary does not qualify as JV or consortium)

vii) In addition to the above, Party A claims that they are not procuring finished goods directly/ indirectly from the vendors from the countries sharing land borders with India as the item is being manufactured in their own production units.

viii) In light of the above facts and the claims put forth by Party A, it is important to clarify to the procurers that Party A acts as an agent for Party B, which manufactures goods in a country sharing a land border with India. Party B supplies goods manufactured at premises established in a country that shares a land border with India. In such a case, registration is required for Party B (and not necessarily for Party A, who is only an agent and not from a country sharing a land border with India).

b) **Taking an example of IT goods and services**:

i) If the contractor is only supplying the servers as it is from an OEM that belongs to a country sharing a land border with India, and there is no value addition done by the contractor, then the contractor acts as an agent for the OEM and registration of the OEM and the agent (contractor) both are required as per the provisions of Rule 144 (xi) of GFR 2017.

ii) In case the contractor supplies value-added services on hardware and the contractor outsources the procurement of hardware, OEM registration is not required.

iii) Where there is deployment of IT services that includes both hardware and software customization, and the contractor has sourced hardware, which is made in the country sharing a land border with India, the requirement of registration as per the provisions of Rule 144 (xi) is not applicable.

Appendix-GM-S2/A9

9 (DMI&SP) Policy, 2019

Domestically Manufactured Iron & Steel Products (DMI&SP) Policy, 2019

1. **Background**: DMI&SP policy provides a preference for Domestically Manufactured Iron and Steel Products (DMI & SP) in Government procurement. By promoting domestically manufactured iron and steel products as well as capital goods used for manufacturing iron and steel products, the Policy contributes to the growth of the Indian iron and steel industry. It was first notified in May 2017, revised in May 2019, and further amended in December 2020. The Ministry of Steel notified on March 8, 2024, of the extension of this Policy till November 2024.

2. **Applicability**:

   a. **Iron & Steel Products**:

      i. The Policy applies to the government procurement of iron & steel products (listed in Appendix A of the Policy, produced in compliance with prescribed quality standards) by every Ministry or Department of Government and all agencies/ entities under their administrative control and to projects funded by these agencies. All Central Sector Schemes (CS)/Centrally Sponsored Schemes (CSS) for which States and Local Bodies make procurement would come within the purview of this Policy if the Government of India fully / partly funds that project / scheme. However, this Policy shall not apply to purchasing iron & steel products with a view to commercial resale or to use in producing goods for commercial sale. The Policy also applies to private agencies' purchase of iron & steel products to fulfil an EPC contract and/ or any other requirement of the Ministry or Department of Government or their PSEs. However, this Policy shall not apply to purchasing iron & steel products with a view to commercial resale or to use in producing goods for commercial sale.

      ii. The Policy shall apply to projects where the procurement value of iron and steel products exceeds Rs. 5 lakhs. The Policy shall also be applicable for other procurements (non-project) where the annual procurement value of iron and steel products for that Government organization is more than Rs. 5 lakhs. However, it shall be ensured by

procuring entities that procurement is not split to avoid the provisions of this Policy.

b. **Capital Goods for Manufacturing Iron & Steel Products**

i. For government procurement of capital goods for manufacturing iron & steel products listed in Appendix B of the Policy (produced in compliance with prescribed quality standards, as applicable), the policy is applicable, irrespective of the project size, to all public sector steel manufacturers and all agencies/ entities under their administrative control, but not for commercial resale. The Policy also applies to the purchase of capital goods for manufacturing iron & steel products by private agencies for fulfilling an EPC contract and/or any other requirement of public sector steel manufacturers and all agencies/ entities under their administrative control.

ii. No Global Tender Enquiry (GTE) shall be invited for tenders related to the procurement of Capital Goods for manufacturing iron & steel products (Appendix- B of the DMI&SP Policy) having estimated value upto Rs. 200 Crore except with the approval of competent authority as designated by Department of Expenditure.

3. **Waivers**: Waivers shall be granted by the Ministry of Steel to all such government procurements subject to the conditions below. The exclusion requests shall be submitted to the Standing Committee along with sufficient proof of unavailability of domestically manufactured iron & steel products:

a. Where specific grades of steel are not manufactured in the country or

b. Where the quantities as per the demand of the project cannot be met through domestic sources

4. **Purchase Preferences**

a. No Global Tender Enquiry (GTE) shall be invited for tenders related to the procurement of iron and steel products (Appendix-A of the Policy). The procurement process shall be open only to the manufacturers/ suppliers capable of meeting/ exceeding the domestic value-addition targets. Manufacturers/ suppliers not meeting the domestic value addition targets shall not be eligible to participate in the bidding.

b. Purchase preference shall be provided to domestically manufactured capital goods listed in Appendix B if their quoted price falls within 20% of the price quoted for corresponding imported capital goods. If the procuring company considers the procured quantity cannot be divided in the prescribed ratio of

50:50, they shall have the right to award the contract to the eligible domestic manufacturer for a quantity not less than 50%, as may be divisible. The contract can be awarded to the eligible domestic manufacturer for the entire quantity if the tendered capital goods are non-divisible. If none of the eligible manufacturers meets domestic value addition requirements and matches the L1 bid, the original bidder holding the L1 bid shall secure the order for the entire procurement value.

5. **Clause in Tender Document:** The tender document for procurement of both Goods as well as for EPC contracts should explicitly outline the eligibility/ qualification criteria for adherence to minimum prescribed domestic value addition by the bidder for iron and steel products and capital goods for manufacturing iron & steel products (as indicated in Appendix A and Appendix B of the policy).

6. **Standing Committee:** A Standing Committee under the Ministry of Steel (MoS), to be chaired by the Secretary (Steel), shall be constituted to oversee the implementation of the Policy. The Committee shall comprise experts from Industry/ Industry Association/ Government Institution or Body/ Ministry of Steel (MoS). The said Committee in MoS shall have the mandate for the following:

   a. Monitoring the implementation of the Policy

   b. Review and notify the Iron & Steel products list and the domestic value addition requirement criteria mentioned in Appendix A and Appendix B.

   c. Issue necessary clarifications for implementation of the Policy, including grant of exclusions to procuring agencies as per section 3

   d. Constitute a separate committee to carry out grievance redressal

   e. The Standing Committee shall submit its recommendations for approval to the Ministry of Steel.

7. **Certification of Local Content:**

   a. To qualify as domestically manufactured iron and steel products/ Capital goods for manufacturing iron & steel products, for purchase preference under this Policy, a minimum domestic value addition of 20% to 50% is specified in Appendix A (of the policy - domestically manufactured iron and steel products) and 50% for Appendix B (of the policy - Capital goods for manufacturing iron & steel products). The domestic value-addition is based on self-certification.

   b. For products in Appendix A, each domestic manufacturer shall furnish the Affidavit of self-certification in the prescribed format to the procuring agency declaring that the iron & steel products are domestically manufactured in terms of the domestic value addition prescribed. It shall be the responsibility of the

domestic manufacturer to ensure that the products supplied are indeed domestically manufactured in terms of the domestic value addition prescribed for the product.

c. For capital goods in Appendix B, the bidder shall furnish the certification issued by the statutory auditor of the domestic manufacturer declaring that the capital goods are domestically manufactured in terms of the domestic value addition prescribed. The bidder shall also be required to provide a domestic value addition certificate on a halfyearly basis (September 30 and March 31), within 60 days of commencement of each half-year, duly certified by the Statutory Auditors of the domestic manufacturer, to the concerned procuring agencies till the completion of the supply, that the claims of domestic value addition made for the product during the preceding 6 months are in accordance with the Policy.

d. The bidders who are selling agents/ authorized distributors/ authorized dealers/ authorized supply houses of the domestic manufacturers of iron & steel products are eligible to bid on behalf of the domestic manufacturers under the Policy. However, this shall be subject to the following conditions:

   i. The bidder shall furnish the authorization certificate issued by the domestic manufacturer for selling domestically manufactured iron & steel products.

   ii. In case the procurement is covered under Appendix A of the Policy, the bidder shall furnish the Affidavit of self-certification issued by the domestic manufacturer to the procuring agency declaring that the iron & steel products are domestically manufactured in terms of the domestic value addition prescribed.

   iii. In case the procurement is covered under Appendix B of the Policy, the bidder shall furnish the certification issued by the statutory auditor to the domestic manufacturer declaring that the capital goods to be used in the Iron & Steel industry are domestically manufactured in terms of the domestic value addition prescribed.

   iv. The bidder shall be responsible for furnishing other documents required to be issued by the domestic manufacturer to the procuring agency as per the Policy.

8. **Complaints and Penalties:**

a. Complaints relating to mis-declaration made to the procuring agency or Ministry of Steel shall be dealt with in the prescribed time frame by examining

the documents at the bidder's cost. A refundable cautionary deposit is required for complaints to the Ministry of Steel.

b. Each procuring agency shall define the penalties in the tender document in case of wrong declaration by the bidder of the prescribed domestic value addition. The penalties may include forfeiting the EMD, other financial penalties, and debarment of the manufacturer/ service provider.

9. **Specifications in Tenders and other procurement solicitations:**

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

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

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

d. **Reciprocity**: If Ministry of Steel is satisfied that Indian suppliers of iron and steel products are not allowed to participate and/ or compete in procurement by any foreign government due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of project of specific value in the procuring country etc., it may, if deemed appropriate, restrict or exclude bidders from that country from eligibility for procurement of that item and/ or other items relating to Ministry of Steel.

e. For the purpose of sub-paragraph d) above, a supplier or bidder shall be considered to be from a country if (i) the entity is incorporated in that country, or (ii) a majority of its shareholding or effective control of the entity is exercised from that country, or (iii) more than 50% of the value of the item being supplied has been added in that country. Indian suppliers shall mean those entities that meet any of these tests with respect to India. The term 'entity' of a country shall have the same meaning as under the FDI (Foreign Direct Investment) Policy of DPIIT as amended from time to time.

f. In case restrictive or discriminatory conditions against domestic suppliers are included in tender documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility

for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procuring entities under relevant provisions. Intimation on all such action shall be sent to the Standing Committee under the DMI&SP Policy.

Appendix-GM-S2/A10

10 Empanelment/ Pre-qualification of Suppliers

Development of New Sources and Registration/ Empanelment/ Pre-qualification of Suppliers

1. Normally, in open tendering, there should be no restriction on prior registration. Entities may provide for registration after selection in unrestricted open tendering. Differences may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification.

   a) **Registration** is to establish genuine identification of the firm (e.g., for e-procurement portals, preferential procurement, and so on).

   b) **Empanelment** is to establish prima-facie capability for restricted tendering (not open tendering, e.g., limited tendering panels).

   c) **Pre-qualification & Approved List/ Multi-use List**:

      i) **Pre-qualification**: Wherever the nature of the requirement dictates competition only among prequalified bidders (without vitiation of prices offered by unqualified bidders), prequalification may be done with open tendering in the prequalification bidding stage.

      ii) **Approved List/ Multi-use List**: If there are frequent requirements of such nature, prequalification may be done through an open process with an extended validity of the Shortlist of Qualified Bidders (called List of approved Sources, in some organisations, e.g., Ministry of Railways), for example, one year or longer. The use of a List of Qualified Bidders is also known as a Multi-use list in many countries, as distinct from empanelment (e.g., Limited Tender Panel - which does not undergo a formal open tender pre-qualification/ EoI process). In such long-term Multi-use lists or Approved Lists, if any competent bidder applies for inclusion at any time, it should be examined as per the criteria of the original multi-use list.

2. However, since in common parlance, registration is a word interchangeably used by most departments for all the above three concepts, this usage is being retained, though the distinction would be clear from the context of usage.

3. *For goods and services not available on GeM, and for Works*, the Port specifically requires. Ensuring an up-to-date and current list of registered, capable, and

competent suppliers facilitates efficiency, economy, and promotion of competition in public procurement, especially while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder qualification to avoid unnecessary repetition/ duplication of efforts, thereby saving time, especially in the case of emergency procurement. Registration of the supplier should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Such registered suppliers should be on-boarded on GeM as and when the item or service gets listed on GeM (Amended vide DoE OM No. F.1/26/2018-PPD dated 02.04.2019). The list of registered Firms for the subject matter of procurement should be exhibited on websites of the Port/ their e-Procurement portals.

4. In case of a significant volume of procurements, Port may follow their own policies and procedures for the registration of vendors if they already exist. The policies and procedures for registration described below are for the non-mandatory generic guidance that do not have their own policies/ procedures for this. The Port shall notify the Officers competent to deal with the applications and grant registrations, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the MD/Chairman.

5. Port may use such lists prepared by other Ports also as and when necessary. Registered suppliers are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items and Monetary Limits for which they are registered.

6. **Categories for Registration:** In case of procurement of goods, the Procuring Department shall register firms as suppliers of goods in different trade groups of goods in the following broad categories:

   a) Manufacturers who supply indigenous items;

   b) Agents/distributors of such manufacturers who desire to market their production only through their agents;

   c) Foreign manufacturers with/ without their accredited agent in India;

   d) Stockists of imported spares or other specified items;

   e) Suppliers of imported goods having regular arrangements with foreign manufacturers.

7. **Registration of Manufacturers:** One of the main prerequisites for registration as a manufacturer is that the firm should possess its own in-house testing facilities. In the case of MSE units, the firm does not need its own testing facilities but regular arrangements with other reputed government or government-approved or private agencies in its area for product testing. Before the manufacturer is included in the

list of registered suppliers, the Procuring department shall verify the bona fides and standing of the firm. The Port may also seek assistance from the inspection wing of other inspecting agencies. In the case of firms that have an established quality maintenance system with ISO 9001- 2000 certification (latest version) from authorised agencies, the Port may consider the registration of such firms without carrying out a capacity assessment. Even in the case of firms that have an established quality maintenance system with ISO 9001- 2000 certification (latest version) from authorised agencies, it is necessary for the Port to verify the quality processes put in place.

8. **Grades (Monetary Limits) for Registration:** Registration should be done by grading the firms (Grade A, B, and so on) based on their capability to execute contracts/ orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed while keeping in view the banker's reports, the capacity and capability of the firm, and other financial information indicated in the balance sheets, such as 'profit and loss statements.' An example (not mandatory) of gradation is as follows:

   a) Grade-A: Rs. 25 (Rupees twenty-five) lakh and above;

   b) Grade B: Rupees five lakh to Rs.25(Rupees twenty-five) lakh;

   c) Grade C: Rupees One lakh and up to Rupees five lakh.

9. The firms that are registered for the supply of orders valued above Rupees five lakh should invariably be manufacturers or their authorised agents. Wherever practical, the Port shall register the manufacturers and not agents or intermediaries. A sole selling agent/ authorised agent could be considered for registration, subject to the condition that the Port is satisfied that he is the sole selling agent of manufacturers and that the Port ascertains the financial and technical capabilities of the manufacturers. The availability of a suitable arrangement with the sole selling agent for after-sales service shall also be ensured, and the Port shall also satisfy itself that a valid legal agreement exists between the applicant unit and its sole selling agent during the period for which he is registered.

10. **Procedure for Registration**:

   a) Registration of the suppliers should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and published in the form of a booklet for information of the suppliers. Timeframes and criteria for registration of new suppliers may be clearly indicated;

   b) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data on new suppliers can be

obtained from the response received from suppliers, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of NSIC, Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-procurement and GeM portals pre-register suppliers online. Such data can be a source of information on prospective suppliers;

c) The list of registered contractors shall be updated on a regular basis (annually). New supplier(s) may be considered for registration at any time, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new suppliers, the Port should call for EoI by publicising its need for the development of sources. The stages to be followed together with the applicable guidelines for EoI have been detailed in Chapter 5 of Section-1;

d) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of registered suppliers, besides any other penalty or more severe action as deemed fit;

e) Along with the new/ renewal application for registration, the suppliers should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Port's General Conditions of Contract (GCC). Such GCC should be part of the application.

f) Registered vendors must participate in relevant limited tenders. In case they do not respond to at least three (3) tenders in a year on being invited to do so (if there were at least 6 invitations to them), they may be removed from the list of registered vendors.

g) **Eligibility**:

   i) Any firm situated in India or abroad that is in the business of providing goods/ works/ services of specified categories of interest shall be eligible for registration;

   ii) Where registration is granted based on partly outsourced arrangements/ agreements, it shall always be the responsibility of the registered unit to keep such arrangements/agreements renewed/alive and to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void ineffective retrospectively from any such dates which the registering authority considers appropriate;

iii) Suppliers should possess a valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/ renewal to enable them to participate in e-procurements.

iv) The Firm should also have good internal governance, such as whistleblower policy, commitment to ESG (Environmental, Social, and Governance) code of conduct, code of business ethics, etc.

v) The firm against whom punitive action has been taken shall not be eligible for reregistration during the currency of punitive action. Registration requests may not be entertained from firms (or their allied firms) who are deregistered/banned;

h) **Assessment of Capacity and Capability:** The application form, complete in all respects and accompanied by the requisite processing fee and prescribed documents, shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms, shall be scrutinised carefully to assess the capacity and capability of the firms, including credentials, manufacturing capability, quality control system, past performance, after-sales service facilities, financial background, and so on, of the applicant. References shall be made to other firms of the standing of whom the applicant firm claims to be a supplier/contractor. Likewise, the applicant firm's bankers may also be requested to advise about the firm's financial standing.

i) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings directly to the firms under intimation of the appellate authority. Where a request for reverification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the Department, a review shall be undertaken. Requests for re-verification after the expiry of the said period would be treated as a fresh application, and a processing fee, if any is prescribed, charged accordingly;

j) If considered to be capable after carefully assessing and verifying credentials, the firm may be granted registration with the approval of Competent Authority.

k) Registration should be for specific trade groups of goods/works/services. For this purpose, all goods/ works/services should be divided into trade groups, and the information published on the relevant portals/ websites;

l) It should be mentioned in the letter of registration that the registration is valid for a specified period (one to three years). At the end of this period, the registered supplier(s) willing to continue with registration is to apply afresh for

renewal of registration. However, the registration would be initially treated as provisional, and it would be treated as confirmed only after the firm has satisfactorily executed one order of the relevant category and value from the Port. The extension of validity of registration is not a matter of right, and the Port reserves the right not to extend such registration without assigning any reason. New supplier(s) may also be considered for registration at any time, provided they fulfil all the required conditions;

m) All registered suppliers should be allocated a unique registration number. The list of registered suppliers for the subject matter of procurement (indicating the names and addresses of the registered suppliers with details of the requirements and monetary value they will supply, as well as the validity period, and so on, for which they are registered), shall be exhibited on the websites of the Port;

n) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit (EMD). In other categories and higher monetary limits, the supplier would be treated as any unregistered supplier and not be entitled to the privileges of a registered supplier. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders more than the monetary limit or for other categories, provided the Port is satisfied with the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms;

o) The performance and conduct of every registered supplier are to be monitored by the relevant department. Port should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the supplier to make a representation), if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or supply substandard goods or make any false declaration to any Government agency or for on public interest considerations;

p) The Port shall retain its option to reassess firms already registered at any later date to satisfy itself with the current financial soundness/ creditworthiness, facilities available, and so on. Thereafter, the Port may decide to retain them as registered suppliers for the requirements and monetary limit that were earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Port officers who reassess the firm, Port shall delete such firm from the registered suppliers' list; (Rule 150 of GFR 2017)

Appendix-GM-S2/A11

11 Debarment of Firms from Bidding

1. Debarment (*GFR Provisions)*

Registration of suppliers and their eligibility to participate in Port's procurements is subject to compliance with the Code of Integrity for Public Procurement and satisfactory performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding': -

a) A bidder shall be debarred if he has been convicted of an offence-

   i) under the Prevention of Corruption Act, 1988, or

   ii) the Indian Penal Code (IPC), 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.

b) A bidder debarred under sub-section (a), or any successor of the bidder shall not be eligible to participate in a procurement process of any Port for a period not exceeding three years commencing from the date of debarment.

c) Port may debar a bidder or any of its successors from participating in any procurement process undertaken by it for a period not exceeding two years if it determines that the bidder has breached the code of integrity.

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

2 Current Guidelines for Debarment

1. PPD DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression of all earlier instructions on this subject (Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021). Public Procurement organisations who have existing guidelines for Debarment (by any name) should revise their guideline in conformity with these guidelines issued by PPD, DoE.

2. **Guidelines on Debarment of Firms from Bidding**:

   a) The guidelines are classified under the following two types: -

i) In cases where debarment is proposed to be limited to one Poer, the Port itself can issue the appropriate Orders, thereby banning all its business dealing with the debarred firm.

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

b) **Definitions**:

i) Firm: The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.

ii) Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the factors listed in its definition in the 'Procurement Glossary' section may be kept in view.

iii) The terms "banning of a firm," 'suspension,' 'Black-Listing' etc. convey the same meaning as "Debarment".

c) All Ports must align their existing debarment guidelines with these guidelines. Further, tender documents must also be suitably amended if required.

3. **Debarment by the Port**:

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

a) A bidder (including its successors/ allied firms) may be debarred from participating in any procurement process for a period not exceeding two years (along with such other actions as may be permissible under law) for the following reasons:

i) If it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.

ii) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dated 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of the code of integrity. A supplier who has been debarred by any Port as per this sub para:

1) The fact and duration of debarment for this reason by any Port must be promptly brought to the notice of the Member-Convenor of the Standing Committee (Joint Secretary DPIIT, under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner.

2) The Standing Committee shall consolidate such cases, and a centralized list or decentralized list of such suppliers with the period of debarment must be maintained on a periodical basis and displayed on the website(s).

3) Such suppliers, though debarred by a single Port, shall not be eligible for preference under the Make in India Order for procurement by any other Port for the duration of the debarment. This shall be effective from the date of uploading such debarment to the website(s).

iii) For any other actions or omissions by the firm that, in the opinion of the Port, warrants debarment. [Supply of substandard material; non-supply of material; abandonment of works; substandard quality of works; failure to abide by "Bid Securing Declaration"; conviction under the Prevention of Corruption Act, 1988; conviction under any law for causing any loss of life or property or causing a threat to public health as part of executing a public procurement contract; employs a government servant who has been dismissed or removed on account of corruption; employs a non-official convicted for an offence involving corruption or abetment of such an offence in a position where he could corrupt government servants, or employs a government officer within one year of his retirement who has had business dealings with him in an official capacity before retirement.]

b) The debarment order shall not be circulated to other Ports.

c) The Port, before issuing the debarment order against a firm, must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including a personal hearing if requested by the firm). Please refer to Annexure 37 for the format of the Show-cause notice for debarment.

d) MD/Chairman may nominate an officer at the rank of HoD or other Officer as per DoP as competent authority (Competent Authority) to debar the firms.

e) The Port will maintain a list of such debarred firms, which will also be displayed on its website.

f) More than one Port may concurrently debar the same firm.

g) Debarment is an executive function and should not be allocated to the Vigilance Department.

h) The period of debarment starts from the date of issue of the debarment order; therefore, the process of debarment should be conducted expeditiously. Considering the quasi-judicial nature of such proceedings and the need to afford a fair hearing to the firm, the following timeline is suggested, which may be suitably modified considering the specifics of an organisation:

i) Noticing of delinquency of the firm by the Port – zero-day
ii) Evaluation of evidence and proposal to Competent Authority for debarment of the firm - 2 Weeks
iii) Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
iv) Time for submission, including reminders, etc – 3 weeks.
v) Evaluation of firm's submission and giving oral hearing to the firm – 3 weeks
vi) Final Order, indicating an opportunity to the firm, 2 weeks to appeal to the MD/Chairman as an appellate authority – 2 weeks.
vii) Total 12 weeks from zero-day, after which the debarment period starts.
viii) Receipt of Appeal and disposal of the same by the appellate authority – 4 weeks.

4. **Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM**: Ministries/ Departments, at their option, may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies, etc. In such cases, broad principles for debarment in sub-paras 3-a) to h) above are to be kept in mind. Debarments by such bodies shall be applicable only to the procurements made by such bodies. Similarly, the Government eMarketplace (GeM) can also debar bidders for up to two years on its portal.

5. **Debarment across All Ports:**

In the following situations, the Port may consider debarring the firm from taking part in any tendering procedure floated by all the Ports:

a) If the bidder has been convicted of an offence (Rule 151 (i) of GFRs, 2017), for debarment upto three years:

i) under the Prevention of Corruption Act, 1988, or

ii) the Indian Penal Code (IPC), 1860 (This law has been replaced by Bhartiya Nyaya Sanhita (BNS), 2023 from 1st July 2024) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of the execution of a public procurement contract.

b) The Port should, after obtaining the approval of the Board, forward to Ministry of Ports, Shipping and Waterways (MoPSW) a self-contained note setting out

all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents.

c) The Port, before forwarding the proposal to MoPSW, must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including a personal hearing if requested by the firm). If MoPSW realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Port shall be rejected.

d) The firm shall remain debarred during the interim period till the final decision is taken by MoPSW, only in the Port forwarding such proposal. For this purpose, the proposing Port shall issue an interim order debarring the firm from taking part in tendering procedures floated by their Port following the procedure laid down in sub-para 3) above. Such order inter-alia must mention that the Port reserves its right to further debar the firm from taking part in any tendering procedure floated across all the Ports, following due procedure.

e) MoPSW can also give additional opportunity, at their option, to the firm to represent against proposed debarment. MoPSW can also take suo-moto action to debar the firms in certain circumstances. MoPSW shall complete the process of Debarment within 12 weeks after receiving the proposal from the concerned Port.

f) MoPSW will issue the necessary orders for debarment for a period not exceeding three years for offences mentioned in Rule 151 (i) of GFRs, 2017, after satisfying itself that the proposed debarment across all the Ports is in accordance with the said rule. This scrutiny is intended to ensure uniformity of treatment in all cases.

g) MoPSW will maintain a list of such debarred firms, which will be displayed on the GeM Central Public Procurement Portal (CPPP). This list on CPPP shall be applicable to all Ports, but in case of doubt, they may confirm it from issuing authority.

h) No contract of any kind whatsoever shall be placed on the firm debarred by MoPSW, including its allied firms, during the period of debarment by any Ports after the issue of a debarment order.

6. **Review and Revocation of Orders**:

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

b) The Port that issued the order of debarment can review or revoke the debarment order before the period of debarment is over, suo-moto (based on new facts that come to light) or on an appeal by the debarred bidder. After a review, an Order for modification of the period of debarment or revocation of debarment, if there is adequate justification for the same, can be issued. Ordinarily, such modification/ revocation of the Order should be done with the approval of the Board of Port/Secretary concerned of the Ministry that issued such orders.

7. **Other Provisions (common to both types of debarments)**:

a) The debarment order shall mention the reason(s) in brief that led to the debarment of the firm and the jurisdictional extent to which the order shall be applicable, besides the validity period of debarment.

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

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

d) Contracts concluded before the issue of the debarment order shall not be affected by the debarment Orders.

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

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

g) The period of debarment shall start from the date of issue of the debarment order for the issuing entity. In respect of procuring entities other than the one that has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.

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

i) It is noticed that may Ports take undertaking from the bidders with respect to their debarment status/ period. Such undertakings, if taken, must be in conformity with the Debarment Guidelines, as above, to avoid any possible confusion.

8. **Safeguarding Port's Interests during Debarment of Suppliers:** Suppliers are important assets for the Port, and punishing delinquent suppliers should be the last resort. It takes a lot of time and effort to develop, register and mature a new supplier. In case of a shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of the Port. Therefore, the Port may always seek the views of the concerned department regarding the repercussions of such punitive action on the continuity of procurements. Port may give due to weightage the past performance of the supplier. In case of a shortage of suppliers and in cases of less serious misdemeanours, the Port may pragmatically analyse the circumstances, reform the supplier, and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be made to see if a shorter period of debarment can serve the purpose. (*Rule 151 of GFR 2017*)

Appendix-GM-S2/A12

12 GFR-2017 - RULES

(updated upto 10-7-2024)

Chapter – 6: PROCUREMENT OF GOODS & SERVICES

PROCUREMENT OF GOODS

Rule 142 This chapter contains the general rules applicable to all Ministries or Departments, regarding procurement of goods required for use in the public service. Detailed instructions relating to procurement of goods may be issued by the procuring departments broadly in conformity with the general rules contained in this Chapter.

Rule 143 Definition of Goods: The term 'goods' used in this chapter includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, subassemblies, accessories, a group of machineries comprising of an integrated production process or such other category of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library. The term 'goods' also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance.

Rule 144 Fundamental principles of public buying: (for all procurements including procurement of works). Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement. The procedure to be followed in making public procurement must conform to the following yardsticks :-

(i) The description of the subject matter of procurement to the extent practicable should – a). be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics. b). not indicate a requirement for a particular trade mark, trade name or brand.

(ii) The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and nonessential features, which may result in unwarranted expenditure.

(iii) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.

(iv) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs.

(v) offers should be invited following a fair, transparent and reasonable procedure.

(vi) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects.

(vii) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required.

(viii) at each stage of procurement, the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.

(ix) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.

(x) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website.

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

Rule 145 Authorities competent to purchase goods: An authority which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with provisions in the Delegation of Financial Powers Rules, following the general procedure contained in the following rules.

Rule 146 Procurement of goods required on mobilisation Procurement of goods required on mobilisation and/ or during the continuance of Military operations shall be regulated by special rules and orders issued by the Government on this behalf from time to time.

Rule 147 Powers for procurement of goods: [The Ministries or Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available on GeM. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149.]

Rule 148 Deleted

Rule 149. Government e-Market place (GeM). Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct online purchases as under:

(i) Up to [Rs.50,000/-] 12 through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period. Note: In case of automobiles, procurement under this sub-rule is permitted without any ceiling limit.

(ii) Above [Rs.50,000/- and up to Rs.10,00,000/-] 13 through the GeM Seller having lowest price amongst the available sellers of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than [Rs 10,00,000]14 .

(iii) Above [Rs.10,00,000/-] 15 through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.

(iv) The invitation for the online ebidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered

their goods/services under the particular product/service category, as per terms and conditions of GeM.

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

(vi) The Ministries/Departments shall work out their procurement requirements of Goods and Services on either "OPEX" model or "CAPEX" model as per their requirement/ suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 days of Budget approval.

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

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

Rule 150 Registration of Suppliers

i) [For goods and services not available on GeM, Head of Ministry/ Department may also register suppliers of goods and services which are specifically required by that Department or Office, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service gets listed on GeM.]

ii) Credentials, manufacturing capability, quality control systems, past performance, after-sales service, financial background etc. of the supplier(s) should be carefully verified before registration.

iii) The supplier(s) will be registered for a fixed period (between 1 to 3 years) depending on the nature of the goods. At the end of this period, the registered supplier(s) willing to continue with registration are to apply afresh for renewal of registration. New supplier(s) may also be considered for registration at anytime, provided they fulfill all the required conditions.

iv) Performance and conduct of every registered supplier is to be watched by the concerned Ministry or Department. The registered supplier(s) are liable to be removed from the list of approved suppliers if they fail to abide by the terms

and conditions of the registration or fail to supply the goods on time or supply substandard goods or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest.

v) [The list of registered suppliers for the subject matter of procurement be exhibited on websites of the Procuring Entity/ their e-Procurement portals.]

Rule 151 Debarment from bidding.

i) A bidder shall be debarred if he has been convicted of an offence— (a) under the Prevention of Corruption Act, 1988; or (b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Expenditure (DoE) will maintain such list which will also be displayed on the Central Public Procurement Portal.

iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

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

Rule 152 Enlistment of Indian Agents: [Ministries / Departments if they so require, may enlist Indian agents, who desire to quote directly on behalf of their foreign principals.]

Ru1e 153 Reserved Items and other Purchase/ Price Preference Policy.

i) [The Central Government, through administrative instructions, has reserved all items of hand spun and handwoven textiles (khadi goods) for exclusive purchase from Khadi Village Industries commission (KVIC). Of all items of textiles required by Central Government departments, it shall be mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as CoOperative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc. including Weavers having Pehchan Cards.]

ii) Ministry of Micro, Small and Medium Enterprises (MSME) have notified procurement policy under section 11 of the Micro, Small and Medium Enterprises Development Ad, 2006.

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

Rule 154 Purchase of goods without quotation: Purchase of goods upto the value of [Rs. 50,000 (Rupees fifty thousand) only] on each occasion may be made without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format. "I„ am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price."

Rule 155 Purchase of goods by Purchase Committee. [In case a certain item is not available on the GeM portal,] Purchase of goods costing above [Rs.50,000 (Rupees Fifty thousand only) and upto Rs.5,00,000/- (Rupees Five lakh only)]23 on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under: "Certified that we, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Expenditure24 or Ministry/ Department concerned."

Rule 156 Deleted. 25

Rule 157 A demand for goods should not be divided into small quantities to make piecemeal purchases to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand

Rule 158 Purchase of goods by obtaining bids. Except in cases covered under Rule 154 and 155, Ministries or Departments shall procure goods under the powers referred to in Rule 140 above by following the standard method of obtaining bids in: (i) Advertised Tender Enquiry (ii) Limited Tender Enquiry (iii) Two-Stage Bidding (iv) Single Tender Enquiry (v) Electronic Reverse Auctions

Rule 159 E-Publishing

(i) It is mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous /Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP).

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

(iii) The above instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party.

(iv) Deleted.26

(v) These instructions would not apply to procurements made in terms of provisions of Rules 154 (Purchase of goods without quotations) or 155 (Purchase of goods by purchase committee) of General Financial Rules.

Rule 160 E -Procurement

(i) It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements.

(ii) Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated eprocurement through any other solution provided so far, may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.

(iii) Deleted.27

(iv) In individual case where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from

e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.

(v) In case of tenders floated by Indian Missions Abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

Rule 161 Advertised Tender Enquiry

(i) Subject to exceptions incorporated under Rule 154, 155, 162 and 166, invitation to tenders by advertisement should be used for procurement of goods of estimated value of [Rs. 50 lakhs (Rupees Fifty Lakh)28 and above. Advertisement in such cases should be given on GeM as well as on GeM-Central Public Procurement Portal (CPPP). An organisation having its own website should also publish all its advertised tender enquiries on the website.

(ii) The organisation should also post the complete bidding document in its website and on CPPP to enable prospective bidders to make use of the document by downloading from the web site.

(iii) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

(iv) [Global Tender Enquiry (GTE): (a) Where the Ministry or Department feels that the goods of the required quality, specifications etc., may not be available in the country and it is necessary to also look for suitable competitive offers from abroad, the Ministry or Department may send copies of the tender notice to the Indian Embassies abroad as well as to the Foreign Embassies in India. The selection of embassies will depend on the possibility of availability of the required goods in such countries. In such cases eprocurement as per Rule 160 may not be insisted. (b) No Global Tender Enquiry (GTE), however shall be invited for tenders up to Rs 200 crore or such limit as may be prescribed by the Department of Expenditure from time to time. Provided that for tenders below such limit, in exceptional cases, where the Ministry or Department feels that there are special reasons for GTE, it may record its detailed justification and seek prior approval for relaxation to the above rule from the Competent Authority specified by the Department of Expenditure.]

(v) In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.

(vi) Ordinarily, the minimum time to be allowed for submission of bids should be three weeks from the date of publication of the tender notice or availability of the bidding document for sale, whichever is later. Where the Department also

contemplates obtaining bids from abroad, the minimum period should be kept as four weeks for both domestic and foreign bidders.

Rule 162 Limited Tender Enquiry

(i) This method may be adopted when estimated value of the goods to be procured is up to [Rupees Fifty Lakhs]30. Copies of the bidding document should be sent directly by speed post/registered post/courier/ email to firms which are borne on the list of registered suppliers for the goods in question as referred under Rule 150 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis. Further, an organisation should publish its limited tender enquiries on [GeM as well as on GeM- Central Public Procurement Portal (CPPP). An organisation having its own website should also publish all its advertised tender enquiries on the website]

(ii) The unsolicited bids should not be accepted. However, Ministries/ Departments should evolve a system by which interested firms can register and bid in next round of tendering.

(iii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than [Rupees Fifty Lakhs]32, in the following circumstances. (a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated. (b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry. (c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.

(iv) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

Rule 163 Two bid system (simultaneous receipt of separate technical and financial bids): For purchasing high value plant, machinery etc. of a complex and technical nature, bids may be obtained in two parts asunder:

(i) Technical bid consisting of all technical details along with commercial terms and conditions; and

(ii) Financial bid indicating itemwise price for the items mentioned in the technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly super-scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly superscribed. The technical bids are to be opened by the purchasing Ministry or Department at the first instance and evaluated by a competent committee or authority. At the second stage financial bids of only these technically acceptable offers should be opened after intimating them the date and time of opening the financial bid for further evaluation and ranking before awarding the contract.

Rule 164 Two-Stage Bidding: (Obtain bids in two stages with receipt of financial bids after receipt and evaluation of technical bids)

(i) Ministry/Department may procure the subject matter of procurement by the method of two-stage bidding, if (a) it is is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or (b) the character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; or (c) Ministry/Department seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or (d) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

(ii) The procedure for two stage bidding shall include the following, namely: (a) in the first stage of the bidding process, the Ministry/Department shall invite bids through advertised tender containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price; (b) all first stage bids, which are otherwise eligible, shall be evaluated through an appropriate committee constituted by the Ministry/ Department; (c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions; (d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or omit any specification of the subject matter of procurement or criterion for evaluation; (e) in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; (f) any bidder, invited to bid but not in a position to supply the

subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

Rule 165 Late Bids. In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.

Rule 166 Single Tender Enquiry. Procurement from a single source may be resorted to in the following circumstances:

(i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.

(ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.

(iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm

Note: Proprietary Article Certificate in the following form is to be provided by the Ministry/ Department before procuring the goods from a single source under the provision of sub-Rule 166 (i) and 166 (iii) as applicable. (i) The indented goods are manufactured by M/s ..... (ii) No other make or model is acceptable for the following reasons: ..... (iii) Concurrence of finance wing to the proposal vide: ..... (iv) Approval of the competent authority vide: (Signature with date and designation of the indenting officer)

Rule 167 Electronic Reverse Auction

(i) Electronic Reverse Auction means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;

(ii) A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if: (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; (b) There is a competitive market of bidders anticipated to be

qualified to participate in the electronic reverse auction, so that effective competition is ensured; (c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms; and

(iii) The procedure for electronic reverse auction shall include the following, namely: (a) The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to eprocurement; and (b) The invitation shall, in addition to the information as specified in eprocurement, include details relating to access to and registration for the auction, opening and closing of the auction and Norms for conduct of the auction.

Rule 168 Contents of Bidding Document: All the terms, conditions, stipulations and information to be incorporated in the bidding document are to be shown in the appropriate chapters as below: Chapter-1: Instructions to Bidders. Chapter-2: Conditions of Contract. Chapter-3: Schedule of Requirements. Chapter-4: Specifications and allied Technical Details. Chapter-5: Price Schedule (to be utilised by the bidders for quoting their prices). Chapter-6: Contract Form. Chapter-7: Other Standard Forms, if any, to be utilised by the purchaser and the bidders.

Rule 169 Maintenance Contract. Depending on the cost and nature of the goods to be purchased, it may also be necessary to enter into maintenance contract(s) of suitable period either with the supplier of the goods or with any other competent firm, not necessarily the supplier of the subject goods. Such maintenance contracts are especially needed for sophisticated and costly equipment and machinery. It may, however, be kept in mind that the equipment or machinery is maintained free of charge by the supplier during its warranty period or such other extended periods as the contract terms may provide and the paid maintenance should commence only thereafter.

Rule 170 Bid Security

(i) To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry or Department [or Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT)]33. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be

procured. The amount of bid security should be determined accordingly by the Ministry or Department and indicated in the bidding documents. The bid security may be accepted in the form of [Insurance Surety Bonds]34 Account Payee Demand Draft, Fixed Deposit Receipt, Banker's Cheque or Bank Guarantee [including eBank Guarantee]35 from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of forty-five days beyond the final bid validity period.

(ii) Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity and latest on or before the 30th day after the award of the contract. [However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.]

(iii) In place of a Bid security, the Ministries/ Departments may require Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit Bids for contracts with the entity that invited the Bids.

Rule 171 Performance Security

(i) To ensure due performance of the contract, Performance Security is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance Security, [in respect of procurement only of Goods/ Consultancy Services/ Non-Consultancy Services, should be for an amount of three to five per cent (3-5%). of the value of the contract as specified in the bid documents. Performance Security may be furnished in the form of [Insurance Surety Bond] Account Payee Demand Draft, Fixed Deposit Receipt from a Commercial bank, Bank Guarantee [including e-Bank Guarantee] from a Commercial bank or online payment in an acceptable form safeguarding the purchaser's interest in all respects.

(ii) Performance Security should remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the supplier including warranty obligations.

(iii) Bid security should be refunded to the successful bidder on receipt of Performance Security.

Rule 172 (1) Advance payment to supplier

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

(i) Advance payment demanded by firms holding maintenance contracts for servicing of Airconditioners, computers, other costly equipment, etc.

(ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc. Such advance payments should not exceed the following limits: (a) Thirty per cent. of the contract value to private firms; (b) Forty per cent. of the contract value to a State or Central Government agency or a Public Sector Undertaking; or (c) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract. Ministries or Departments of the Central Government may relax, in consultation with their Financial Advisers concerned, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

Rule 172 (2) Part payment to suppliers: Depending on the terms of delivery incorporated in a contract, part payment to the supplier may be released after it dispatches the goods from its premises in terms of the contract.

Rule 173 Transparency, competition, fairness and elimination of arbitrariness in the procurement process: All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:-

(i) the text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The bidding document should contain, interalia. (a)Description and Specifications of goods including the nature, quantity, time and place or places of delivery. (b)the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc. or limitation for participation of the bidders, if any. (c)

eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc. which may be required to be met by the successful bidder. (d)the procedure as well as date, time and place for sending the bids. (e)date, time and place of opening of the bid. (f) Criteria for evaluation of bids (g)special terms affecting performance, if any. (h)Essential terms of the procurement contract. (i) Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".

(ii) Any other information which the procuring entity considers necessary for the bidders to submit their bids.

(iii) Modification to bidding document: (a) In case any modification is made to the bidding document or any clarification is issued which materially affects the terms contained in the bidding document, the procuring entity shall publish or communicate such modification or clarification in the same manner as the publication or communication of the initial bidding document was made. (b) In case a clarification or modification is issued to the bidding document, the procuring entity shall, before the last date for submission of bids, extend such time limit, if, in its opinion more time is required by bidders to take into account the clarification or modification, as the case may be, while submitting their bids. (c) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re - submit it, as the case may be, or withdraw such bid in case the modification to bidding document materially affect the essential terms of the procurement, within the period initially allotted or such extended time as may be allowed for submission of bids, after the modifications are made to the bidding document by the procuring entity: Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation

(iv) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid. The reasons for rejecting a tender or non -issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.

(v) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.

(vi) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.

(vii) The bidders should be given reasonable time to prepare and send their bids.

(viii) The bids should be opened in public and authorised representatives of the bidders should be permitted to attend the bid opening.

(ix) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send meaningful bids. In order to attract sufficient number of bidders, the specification should be broad based to the extent feasible

(x) Pre-bid conference: In case of turn- key contract(s) or contract(s) of special nature for procurement of sophisticated and costly equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for one or more rounds of pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details of the plant, equipment and machinery etc. projected in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of bid opening date. The records of such conference shall be intimated to all bidders and, shall also be exhibited on the website(s) where tender was published.

(xi) Criteria for determining responsiveness are to be taken into account for evaluating the bids such as: (a) time of delivery. (b) Performance/ efficiency/ environmental characteristics. (c) the terms of payment and of guarantees in respect of the subject matter of procurement (d) price. (e) cost of operating, maintaining and repairing etc.

(xii) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; No new condition which was not incorporated in the bidding documents should be brought in for evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.

(xiii) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.

(xiv) Negotiation with bidders after bid opening must be severely discouraged. However, in exceptional circumstances where price negotiation against an ad-hoc procurement is necessary due to some unavoidable circumstances, the same may be resorted to only with the lowest evaluated responsive bidder.

(xv) Deleted.

(xvi) Contract should ordinarily be awarded to the lowest evaluated bidder whose bid has been found to be responsive and who is eligible and qualified to perform the contract satisfactorily as per the terms and conditions incorporated in the corresponding bidding document. However, where the lowest acceptable

bidder against ad-hoc requirement is not in a position to supply the full quantity required, the remaining quantity, as far as possible, be ordered from the next higher responsive bidder at the rates offered by the lowest responsive bidder.

(xvii) Procurement of Energy Efficient Electrical Appliances: Ministries/ Departments while procuring electrical appliances notified by Department of Expenditure shall ensure that they carry the notified threshold or higher Star Rating of Bureau of Energy Efficiency (BEE).

(xviii) The name of the successful bidder awarded the contract should be mentioned in the CPPP, Ministries or Departments website and their notice board or bulletin.

(xix) Rejection of all Bids is justified when a. effective competition is lacking. b. all Bids and Proposals are not substantially responsive to the requirements of the Procurement Documents. c. the Bids'/Proposals' prices are substantially higher that the updated cost estimate or available budget; or d. none of the technical Proposals meets the minimum technical qualifying score.

(xx) Lack of competition in rule 173(xix) shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied: a) the procurement was satisfactorily advertised and sufficient time was given for submission of bids b) the qualification criteria were not unduly restrictive; and c) prices are reasonable in comparison to market values

(xxi) When a limited or open tender results in only one effective offer, it shall be treated as a single tender contract.

(xxii) In case a purchase Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee in case estimated value of procurement exceeds [Rs. 50 lakhs].

Rule 174 Efficiency, Economy and Accountability in Public Procurement System: Public procurement procedure should ensure efficiency, economy and accountability in the system. To achieve the same, the following keys areas should be addressed:

(i) To reduce delay, appropriate time frame for each stage of procurement should be prescribed by the Ministry or Department.

(ii) To minimise the time needed for decision making and placement of contract, every Ministry/Department, with the approval of the competent authority, may

delegate, wherever necessary, appropriate purchasing powers to the lower functionaries.

(iii) The Ministries or Departments should ensure placement of contract within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances.

(iv) Deleted.

Rule 175 (1) Code of Integrity

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of (a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process. (b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided. (c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process. (d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain. (e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly. (f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process. (g) obstruction of any investigation or auditing of a procurement process. (h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of subclause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity.

Rule 175 (2) The procuring entity, after giving a reasonable opportunity of being heard, comes to the conclusion that a bidder or prospective bidder, as the case may be, has contravened the code of integrity, may take appropriate measures.

Rule 176 Buy-Back Offer: When it is decided with the approval of the competent authority to replace an existing old item(s) with a new and better version, the department may trade the existing old item while purchasing the new one. For this

purpose, a suitable clause is to be incorporated in the bidding document so that the prospective and interested bidders formulate their bids accordingly. Depending on the value and condition of the old item to be traded, the time as well as the mode of handing over the old item to the successful bidder should be decided and relevant details in this regard suitably incorporated in the bidding document. Further, suitable provision should also be kept in the bidding document to enable the purchaser either to trade or not to trade the item while purchasing the new one.
