



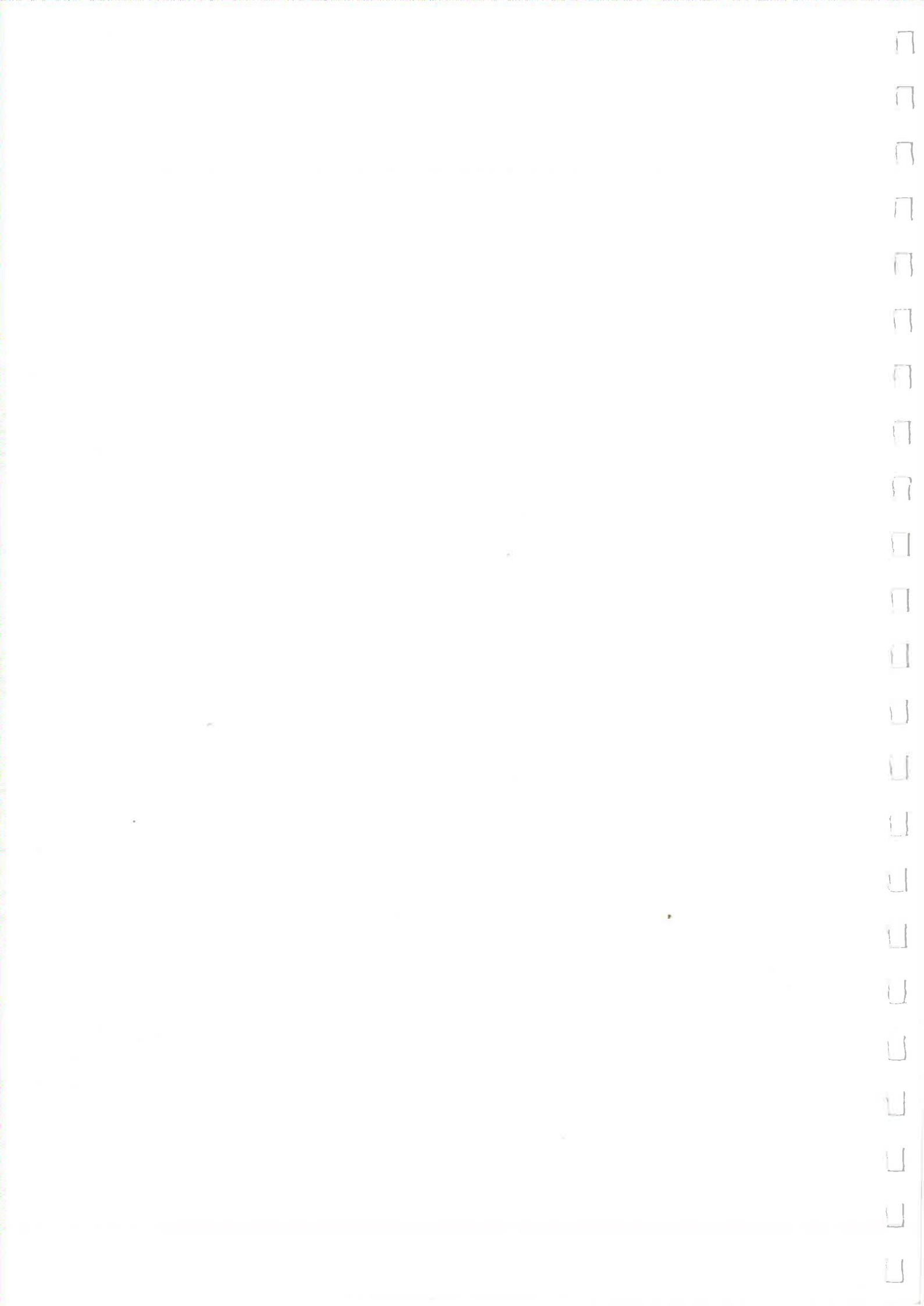
KAMARAJAR PORT LIMITED

(A Company of Chennai Port Authority)

MANUAL FOR PROCUREMENT OF CONSULTANCY SERVICES



MARCH 2025



KAMARAJAR PORT LIMITED

CONSULTANCY SERVICES MANUAL

MARCH 2025



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FOREWORD

1. Ports spend sizeable amounts of their budgets on works to create Assets and to maintain them. Ports have been delegated powers to make their own arrangements for procurement of works. In order to effectively plan the projects and monitor them, Ports procure the services of expert Consultants in the field so that the Port officers can concentrate on the day-to-day management of the operations.
2. To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of bidders/contractors, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement which provide framework for the public procurement system.
3. The Manual for Procurement of Consultancy and Other Services was first prepared in 2006 and later comprehensively reviewed in 2017 by Ministry of Finance – Department of Expenditure and the updated guidelines are issued in June 2022. The Manual, over a period of time, has become a standard reference document for officials involved in Works in Public Procurement across all Ministries/ Departments/ PSUs/ Autonomous Bodies. All the procurement related instructions issued by Central Vigilance Commission have been subsumed into the manual in collaboration with Commission. In 2024, DoE has issued a revised draft Manual for procurement of Consultancy services by separating the Non-Consultancy & Other services.
4. Manuals issued by DoE are generic guidelines which are necessarily broad in nature. Ports are advised to supplement this manual to suit their local/specialized needs by issuing their own detailed manuals, Customized formats, Standard Bidding documents based on the Model Tender Documents and Delegation of powers to serve as detailed instructions to their Procuring officers.
5. In line with the above, this manual is prepared to serve as a guide to the officers dealing with various works and procurement. The guidelines in this manual serve only as ready reference to the officials. In case of further clarity, the Manual for Procurement of Works issued by DoE in June 2022 or revised if any, shall be referred.
6. In case of any provisions of this Manual have ambiguity or conflict with the provisions of any act, Rules, Policies, guidelines, Govt. Instructions, CVC advices, GFR etc. the guidelines issued by the later shall prevail. The department shall review such clauses as and when required.
7. Any relaxation in the guidelines shall require the approval of the Competent Authority.

March 2025

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Abbreviations and Acronyms

AAEC	-	Appreciable Adverse Effect on Competition
BC (selling)	-	Bill for Collection Selling (Foreign Exchange) Rate
BDS	-	Bid Data Sheet
BG	-	Bank Guarantee
BOC/TOC	-	Bid /Tender Opening Committee
BOQ	-	"Bill of Quantities" (refers to the Price Schedule in Excel sheet)
BSD	-	Bid Securing Declaration (in lieu of Bid Security, if permitted)
CCI	-	Competition Commission of India
CEC	-	Consultancy Evaluation Committee or Tender Evaluation Committee (TEC)
CIPP	-	Code of Integrity for Public Procurement
CMC	-	Contract Management Committee
CoI	-	Conflict of Interest
CPPP	-	Central Public Procurement Portal
CPSE	-	Central Public Sector Enterprise
CV	-	Curriculum Vitae
CVC	-	Central Vigilance Commission
CVO	-	Chief Vigilance Officer
DFPR	-	Delegation of Financial Power
DoE	-	Department of Expenditure (Ministry of finance)
DPIIT	-	Department for Promotion of Industry and Internal Trade
DSC	-	Digital Signature Certificate
EC	-	Evaluated Cost
ECS	-	Electronic Clearing System
(N) EFT	-	(National) Electronic Funds Transfer
EMD	-	Earnest Money Deposit
EoI	-	Expression of Interest (Tender)

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

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

PSU	-	Public Sector Undertaking
PVC	-	Price Variation Clause
QCBS	-	Quality and Cost Based Selection
RBI	-	Reserve Bank of India
RfP	-	Request for Proposal
REoI	-	Request for Expression of Interest
RTGS	-	Real Time Gross Settlement
RTI	-	Right to Information (Act)
SBD	-	Standard Bidding Document
SCC	-	Special Conditions of Contract
SD	-	Security Deposit, also see PBG.
SHG	-	Self Help Group
SLA	-	Service Level Agreement
SoPP	-	Schedule of Procurement Powers
SoR	-	Schedule of Rates
SSS/ STE	-	Single Source Selection/ Single Tender Enquiry
STP	-	Simplified Technical proposal
TC	-	Tender Committee
TEC	-	Tender Evaluation Committee
TCO	-	Total Cost of Ownership
TCS	-	Tax Collected at Source
TDS	-	Tax Deducted at Source
ToR	-	Terms of Reference
VfM	-	Value for Money
WOL	-	Whole of Life (Cost) or Total Cost of Ownership TCO

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires, the main preferred term is within the inverted commas. 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 employed to do any act for another or represent another in dealings with a third person. In the context of public procurement, an Agent is a representative participating in the Tender Process or Execution of a Contract for and on behalf of its principals.
2. "Allied firms" (including the term 'affiliates'/ 'affiliated firm', 'sister concern', 'associated firm', 'related party' in different contexts) of a bidder/ contractor (Principal firm, includes Joint Venture Company) is a firm/ concern that comes within the sphere of effective influence of the principal firm, based on – i) Principal Firm being a proprietary firm owns it, ii) Principal firm being a partnership firm, has common (all or majority of) partners, or any one of partners having profit share of 20% or more iii) Common Management (say majority of director) with the Principal firm; iv) Partners or directors of the principal firm have a majority interest in the management; v) Principal firm has a controlling voice by owning substantial or majority (20% or more) shares; vi) Principal firm directly or indirectly controls or is controlled by or is under common control, by way of any agreement/ MoU or otherwise, v) is a successor/ subsidiary to the principal firm or vice-a-versa; vii) have common offices/ manufacturing facilities.
3. "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
4. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity/Port;
5. "Bidder registration document" means a document issued by a Procuring Entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
6. "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for

submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;

7. "Bill of Quantities" (including the term Price Schedule or BOQ) means the priced and completed Bill of Quantities forming part of the bid.
8. "Central Public sector enterprise" means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 (fifty) per cent of the issued share capital;
9. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
10. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
11. "Competent authority" means the officer(s) who finally approves the decision.
12. "Contract" (including the terms 'procurement Contract' or 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services', 'rate contract' or 'framework contract' or 'Letter of Award – LoA' (letter or memorandum communicating to the contractor the acceptance of his bid) or 'Agreement' or a 'repeat order' accepted/ acted upon by the contractor or a 'formal agreement', under specific contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country;
13. "Contractor" (including the terms 'Supplier' or 'Service Provider' or 'Consultant' or 'Firm' or 'Vendor' or 'Manufacturer' or 'Successful Bidder' under specific contexts) means the person, firm, company, or a Joint Venture with whom the contract is entered into and shall be deemed to include the contractor's successors (approved by the Procuring Entity), agents, subcontractor, representatives, heirs, executors, and administrators as the case may be unless excluded by the terms of the contract.;

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

20. "Model Tender (Bidding) Document(s)" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents, or 'Standard Bidding Documents' - SBD in certain contexts) means a document issued by the procuring entity, including any amendment thereto, that sets out the terms, conditions of the given procurement, and includes the invitation to bid. A Model (Standard) Tender (Bidding) Document is the model template to be used for preparing Tender Document after making suitable changes for specific procurement;
21. "Non-consultancy services" (including the term 'Outsourcing of Services' in specific contexts) are defined by exclusion as those services that cannot be classified as Consultancy Services. These involve routine, repetitive physical, procedural, and non-intellectual outcomes for which quantum and performance standards can be clearly identified and consistently applied and are bid and contracted on such basis e.g., drilling, aerial photography, satellite imagery, mapping, and similar operations. It may include small works or supply of goods or consultancy, which are incidental or consequential to such services; Any reference to Services shall be deemed to include the supply of goods or performance of consultancy service or small works, which are incidental or consequential to such services;
22. "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
23. "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
24. "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of Non-consultancy services which were traditionally being done in-house by the employees of Port (e.g. Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). Besides outsourcing, Non-consultancy services also include procurement of short-term stand-alone services.
25. "Parties": The parties to the contract are the "Contractor" and the Procuring Entity, as defined in this clause;

26. "Performance Security" (includes the terms 'Security Deposit' or 'Performance Bond' or 'Performance Bank Guarantee' or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the contract;
27. "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
28. "Pre-qualification document" means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the pre- qualification bidding and includes the invitation to pre-qualify;
29. "Procurement" or "public procurement" (or 'Purchase', or 'Government Procurement/ Purchase' in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
30. "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Non-consultancy services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
31. "Procurement Officer" means the officer signing the Letter of Award (LoA) and/or the contract on behalf of the Procuring Entity;
32. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity's

Documents relevant to the context (Codes, Manuals and Standard/ Model Tender Documents);

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

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

43. "Special Conditions" means Special Conditions of Contract, which override the General Conditions, also referred to as SCC.
44. "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
45. "Tender;" "Tender Document;" "Tender Enquiry" or "Tender Process": 'Tender Process' is the entire process from the publishing of the Tender Document till the resultant award of the contract. 'Tender Document' means the document (including all its sections, appendices, forms, formats, etc. and including various terms prevalent for such documents) published by the Procuring Entity to invite bids in a Tender Process. The Tender Document and Tender Process may be generically referred to as "Tender" or "Tender Enquiry", which would be clear from context without ambiguity.
46. "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, railway, airports, shipping-ports, bridges, buildings, irrigation systems, water supply, sewerage facilities, dams, tunnels and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

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**KAMARAJAR PORT LIMITED
CONSULTANCY SERVICES MANUAL
Section-1**

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Chapter-1

Introduction

1.0. Introduction to Procurement of Consultancy Services

1.1. Procurement Rules and Regulations; and this Manual

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

1.2. Clarification, Amendments and Revision of this Manual

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

1.3. Applicability of this Manual

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

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

- i) Management consultants,
- ii) Policy consultants,
- iii) Communications consultants,
- iv) Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

4. Non-consultancy services (which as distinguished from 'Consultancy Services') involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services.

Non-consultancy services may include:

- i) transport services;

- ii) logistics;
- iii) clearing and forwarding;
- iv) courier services;
- v) upkeep and maintenance of office/ buildings/ estates (other than Civil & Electrical Works etc.);
- vi) drilling,
- vii) aerial photography,
- viii) satellite imagery,
- ix) mapping, and similar operations etc.

5. These guidelines would continue to apply if the Port

- i) outsources the procurement process or
- ii) bundle the procurement process with other contractual arrangements or
- iii) utilise the services of procurement support agency or
- iv) procurement agents to carry out the procurement on their behalf.
- v) But these procurement guidelines would not apply to procurements by the Ports for their own use from their subsidiary companies in which they have controlling share.
- vi) GePNIC portal (eproc.gov.in), GeM portal and various such platforms of different Organisations carry out large proportion of Public procurement, hence the procedures of such platforms should generally conform to these 'Procurement Guidelines'.

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

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

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

1.4. Categorisation of procurements

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

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

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

1.5. Authorities Competent to incur Expenditure on a Procurement

1. The first step in procurement to procure goods, services or works involves a formal decision to procure something along with the exact or approximate expenditure to be incurred. A Competent authority which is competent to incur expenditure may accord administrative sanction/ approval to incur expenditure on a specific procurement in accordance with the Delegation of Financial Rules.

Each 'Port' may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 1.

2. Being a decision with a financial bearing and hence invariably requires consultation with the Head of Finance Department.
 - a) **Normal Procedure:** The concurrence of the Finance department shall be required on all procurement matters, except for matters where re-delegation has been done within the limits permissible under the rules/ general orders/ general instructions.
 - b) **Special Procedure:** The Port may, with the prior concurrence of the Board, lay out the types/ classes of cases where the Finance department consultation would be required which may be in terms of threshold financial limits, stages in procurement or types of procurement and contracts viz. consultancy, goods and works contracts etc. or any permutation thereof.
3. In all procedures, payments under approved contracts shall not require consultation with Finance except in cases where the payments are in relaxation/variation to approved contract conditions.

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

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

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

1.7. Fundamental Principles of Public Procurement

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

public procurement, which all procuring authorities must abide by and be accountable for:

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

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

1.8. Public Procurement Infrastructure at the Centre

1.8.1. Procurement Policy Division

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

1.8.2. Central Public Procurement Portal

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

1.9. Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. (General and Financial Rules, 2014, Rule 153).

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

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

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

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

- d) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent [that is, 16 (sixteen) per cent out of 25 (twenty five) per cent] is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three percent earmarked to women entrepreneur will be met from other MSEs. MSEs would be treated as owned by SC/ ST entrepreneurs:
 - i) In case of proprietary MSE, proprietor(s) shall be SC/ ST;
 - ii) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
 - iii) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.

4. If subcontract is given to MSEs, it will be considered as procurement from MSEs.
5. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs
6. To develop MSE vendors so as to achieve their targets for MSEs procurement, Port shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Ports have to take the following steps:
 - a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Port for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and

- c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
- d) A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

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

1.9.2. Procurement Preference to Make in India

1. To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment.

Department for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017 (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-CSM-S2/A2

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

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

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

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

1.9.4. Support to Start-up Enterprises

1. Definition of Start-up Enterprises

- a) As defined by DPIIT, an entity shall be considered as a 'Start-up':
 - i) 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 Department for Industry & Internal Trade (DPIIT), subject to meeting of quality & technical specifications. Startups may be MSMEs or otherwise. The decision of the Port in this regard shall be final. (Rule 173 (i) of GFR 2017).
- c) However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where Port may prefer the vendor to have prior experience rather than giving orders to new entities (Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016).

1.10. When is Procurement of Consultancy Services justified

Rule 178 & 180 of GFR 2017, permits Ports to hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion. Engagement of consultants may be resorted to in situations requiring high quality services for which the Port does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s). justification is needed for Procurement of Consultancy Services on consideration of:-

- a) The inadequacy of Capability or Capacity of required expertise in-house;
- b) The need to have qualified consultants for providing a specialized high-quality service;
- c) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
- d) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;

- e) Need to acquire information about/ identifying and implementing new methods and systems;
- f) Need for planning and implementing organizational change;
- g) There may be internal capacity/ capability to do the job but there are considerations of economy, speed, and efficiency in relation to additional requirement/ commitment/ usage of;
 - i) Staff/ Management/ Organization;
 - ii) Technological and Material Resources;
 - iii) Money, and
 - iv) Time/ Speed of execution.

1.11. Principles for Public Procurement of Consultancy Services

1. Other principles of Public Procurement as mentioned in 1.7 above are also equally applicable to Procurement of consultancy services. To ensure value for money during procurement of consultancy services, the following additional principles shall be considered:
 - a) Services to be procured should be justifiable in accordance with Para 1.10 above;
 - b) Terms of Reference (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Port;
 - c) Equal opportunity to all qualified service providers to compete should be ensured;
 - d) Engagements should be economical and efficient. (Rule 182 of GFR 2017);
 - e) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;
 - f) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10 above. (Rule 179 of GFR 2017)
2. In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Hence Procurement of Consultancy needs to be done in a two-stage process.

1.12. The Law of Agency – applicable to Procurement of Consultancy services

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

1.13. Public Procurement Cycle in Consultancy Services

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

1. Need Assessment:
 - a) Preparation of Procurement Proposal (Concept Paper) and obtaining in principle approvals;
 - b) Preparation of the Terms of Reference (ToR), cost estimate and seeking administrative and budgetary approval;
 - c) Developing a Procurement Plan
2. Shortlisting of Qualified Consultants – EOI process
3. RfP Invitation Process: Preparing 'Request for Proposal (RfP) Document', publication, receipt and opening of bids;
4. Bid Evaluation and Award of Contract:
 - i) Preliminary Examination and Evaluation of technical proposals: consideration of quality;
 - ii) Evaluation of financial proposals;
 - iii) Selection of winning proposal; Negotiations and award of the contract to the selected firm; and
5. Monitoring of Assignments.

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

1.14. Nomenclature Conundrum

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

Chapter-2

Need assessment and Procurement Planning

2.1. Need Assessment

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

2.2. Process in Procurement Proposal

2.2.1. Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared (Please see a suggested format in Annexure 2: Format of Procurement Proposal). It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User/Proponent should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the assignment and justify the procurement based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the service providers should also be clearly identified at this stage. Justifications for procurement of Consultancy Services as given in para 1.10 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Terms of Reference (ToR) for consultancy services is drawn up. A procurement proposal should contain:

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

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

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

2.2.2. In-principle Approval for initiating procurement of Services

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

2.3. Developing a Procurement Plan

2.3.1. Planning the Procurement

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

method of selection and type of contract and ensuring that selection of service provider is initiated and completed to in timely manner to meet the overall requirements of project implementation.

For example, if a consultant is required for a large road project construction supervision, the entire sequence of preparation of the feasibility report, detailed design and bidding document, time required for inviting bids for construction work, and award of contract has to be considered so that the construction supervision consultant is mobilised before the award of the construction contract. Procurement planning is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations.

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

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

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

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

2.3.2. Need assessment and Procurement Planning - Risks and Mitigations

Risk	Mitigation
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.	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.
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.	Need assessment should be done sufficiently in advance of the time when goods are required. In case of urgent requirements, the urgency certificate should be approved by authority empowered to grant administrative approval for the indent, recording justification – why the need could not be formulated earlier.
The estimate of the costs may be inadequate. This may lead to inadequate response from the bidders and may delay finalisation of	Estimates of procurement should be prepared with due diligence, keeping in view inflation, technology changes, profit margins etc.

Risk	Mitigation
procurement. It may also adversely affect the quality of supplies.	
<p>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.</p>	<p>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.</p>
<p>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.</p>	

Chapter-3

Formulation of ToR and Estimating Costs

3.1. Preparation of Terms of Reference (ToR)

1. ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified.
 - a) It explains the purpose/ objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Port and consultant, expected results, and deliverables of the assignment.
 - b) It is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved.
 - c) It reduces the risk for the Port of unnecessary extra work, delays, and additional expenses.
 - d) In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy.
2. Hence ToR should be comprehensive and unambiguous. However, it should not be too detailed and inflexible, so that competing consultants may be in a position to propose their own methodology and staffing. Bidders shall be encouraged to comment on the ToR in their proposals. The ToR shall include:
 - a) Port's background and Project background;
 - b) Purpose and Service Outcomes Statement of the assignment;
 - c) Detailed scope of work Statement including schedule for completing the assignment;
 - d) Expected requirement of key professionals and kind of expertise;
 - e) Capacity-building programme and transfer of knowledge, if any;
 - f) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
 - g) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;

- h) Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Port;
- i) Institutional and organisational arrangement; and
- j) Procedure for review of the work of consultant after award of contract

3. A template for developing a ToR is given at Annexure 3. It should cover following aspects:

- a) **Detailed Scope of Work:** As part of the ToR, at its simplest, the 'Detailed Scope of Work' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as envisaged in the 'Brief proposal and Justification of the Services'.
 - i) Starting from end-outcomes backwards, the process to achieve the outcomes is broken down into a discrete number of interrelated tasks, which the consultant will have to undertake.
 - ii) In consultancy Services, the 'Detailed Scope of Work' should describe only the activities, not the approach or methodology by which the results are to be achieved, since these are the task of the consultants.
 - iii) However, suggestions may be provided on the approach or the methodology that the consultants could or should use to execute the assignment.
 - iv) After the tasks are identified, a logical sequencing of the tasks must be determined. Usually a simple bar chart (or Gantt-chart) is the best way to illustrate required outputs over time and their relationship to each other.
 - v) The 'Detailed Scope of Work' contains such a sequence of tasks over a timeline and also tangible outputs and activities such as reports, workshops, or seminars.
- b) **Expected requirement of key professionals and kind of expertise"**
 - i) Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as "activity based" ToR as opposed to "position-based" ToR.
 - ii) The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number

of experts is small, the work to be done is not clearly defined, and a degree of flexibility is required— this is acceptable.

- iii) In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.
- c) **Deliverables and Reports Requirements:** The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the Port well informed and not forcing consultants to spend an excessive amount of time preparing minor reports. The ToR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports. For all major reports, an executive summary is recommended as a separate section. Depending on the assignment, the following reports are usually required;
 - i) **Inception Report:** This report should be submitted about six weeks (or a time frame depending upon the Assignment) after the commencement date. Any major inconsistency in the ToR, staffing problems, or deficiency in Port's assistance that have become apparent during this period should be included. The inception report is designed to give the Port confidence that the assignment can be carried out as planned and as agreed upon in the contract, and should bring to its attention major problems that might affect the direction and progress of the work.
 - ii) **Progress Reports:**
 - a) These reports keep the Port regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due.
 - b) Depending on the assignment, progress reports may be delivered monthly or bimonthly.
 - c) For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory.
 - d) For technical assistance and implementation supervision, for instance, construction, progress reports are best submitted monthly.
 - e) Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule.
 - f) Photographs with time-stamping are a quick and easy way of conveying the status of a project, and their use in progress reports should be encouraged.

- g) For technical assistance services, progress reports also serve as a means of setting out the work program for the following months.
- h) Each team member usually contributes to the preparation of the monthly report.
- iii) **Interim Reports:** If the assignment is phased, interim reports are required to inform the Port of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, the Port should discuss the draft interim reports with consultants in the field. The Port should not take more than 15 (fifteen) days to review and approve draft interim reports.
- iv) **Final Report:** The final report is due at the completion of the assignment. The Port and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the Port, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.
- d) Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.
- e) Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and reality check is necessary, while preparing this statement.
- f) Procedure for review of the consultancy after award of contract: In consultancy services, the Consultancy Monitoring Committee (CMC), and procedure for review and approval of work of the consultant after the award of contract should also be declared and adhered to. (Rule 185 of GFR 2017)

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

1. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked.

- a) **Categories:** Costs shall be divided into two broad categories: (i) fee or remuneration (according to the type of contract used); and (ii) reimbursable costs. Depending on the nature of the assignment, cost estimates may be prepared either in local currency or with a combination of local plus foreign currencies. Cost estimate should provide for forecast of inflation during the period of assignment.
- b) **Estimated Resources:** The cost estimate shall be based on the Port's assessment of the resources needed to carry out the assignment:
 - i) Staff time
 - ii) logistical support (City, National and International Travels/ Trips and durations), and
 - iii) physical inputs (for example, vehicles, laboratory equipment)
 - iv) Miscellaneous (Support services, contingencies and Profit element, taxes and duties)
- c) **Rates:** Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services). Rates of payment should be identified (including applicable taxes if any) in local and foreign currency for Staff Time, Logistics Costs and Costs of various physical inputs/ support services.
- d) **Staff Costs:**
 - i) The estimate of staff cost is based on an estimate of the personnel time (staff-months or staff-hours) required for carrying out the assignment taking into account the time required by each expert, his or her billing rate, and the related direct cost component.
 - ii) In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances.
 - iii) It is useful to prepare a bar chart indicating the duration of each main activity (work schedule) and time to be spent by different members of the consultancy team (staffing schedule) distinguishing tasks to be carried out by foreign and local consultants.
 - iv) Due consideration should be given to the expected breakdown of a consultant's time in the home office and client's countries and away from home office allowance.

- e) **Logistic Costs:** Number of trips required should be estimated as required to carry out various activities. Travel costs may be included for city travel, National and International travel and stay.
- f) **Physical Inputs Costs:** Assessment of such costs would depend on the technical requirements of equipment.
- g) **Miscellaneous costs:** Support services may be taken as a percentage of staff costs. Contingencies and Profit elements are usually taken as a percentage of the total cost of the Consultancy. To this would be added the taxes and duties likely to be incurred by the consultants.

2. Although assignments vary in size, length and nature, it is possible to make a cost estimate by breaking down the assignment's activities into the following cost categories:

- a) Professional and support staff;
- b) Travel, Hotel, and transport;
- c) Mobilisation and demobilisation;
- d) Office rent, Furniture/ Equipment, supplies, Utilities, IT equipment and communication;
- e) Assignment related surveys, training programmes;
- f) Translation, report printing;
- g) Contingencies: miscellaneous, insurance, shipping; and
- h) Indirect local taxes and duties in connection with carrying out the services.

3. A mismatch between the cost estimate and the ToR is likely to mislead consultants on the desired scope, depth, and details of service required, and this could lead to serious problems during contract negotiations or during implementation of the assignment.

3.3. Final Administrative and Budgetary Approvals

1. The scope of the work described in the ToR shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included in the ToR. The next step is to determine whether adequate budget has been allocated to implement the ToR as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable ToR is formulated. CA's (Competent Authority) approval may be taken for the ToR before proceeding ahead. After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval

may be taken from the CA for inclusion in the Revised Estimate stage of Budget. Procurement may be initiated only after such budgetary provisions/ confirmations.

2. Port may lay down a schedule of powers for administrative and budgetary approval of procurement proposals for services. Before granting such approvals, it should be certified that funds in the budget are available and liability for this procurement proposal is noted against the total available budget.

Chapter-4

Participation of Bidders-Legal status

4.1. Eligibility Criteria for Participation in Tender Process

1. Normally participation in Tender Process should be open to all bidders. However, Port should lay down 'Eligibility' criteria, based on requirement of the procurement and Government Policies. 'Eligibility' and 'Qualification' criteria (Experience; Performance and Financial Capabilities), are entirely different criteria and should not be mixed up. 'Eligibility' criteria regulate the participation of bidders in the Tender process, while 'Qualification' criteria are for evaluation of bidders for award of the contract. Bidder should meet the eligibility criteria as of the date of his bid submission (and should continue to meet these till the award of the contract) otherwise his bid would be rejected as non-responsive and would not be evaluated for award of contract. Bidder shall be required to declare fulfilment of Eligibility Criteria in his bid document. Some of the eligibility criteria is related to following issues (for details refer to relevant Model Tender Documents):

- a) **Legal status of the bidder:** a natural person or a private entity or a public entity (State-owned enterprise or institution), a Joint Venture/ Consortium (an association of several persons, firms, or companies - hereinafter referred to as JV/C).
- b) Requirement of various registrations/ licences from various statutory authorities, required for the subject matter of procurement: GSTIN, PAN, EPF, ESI, Labour, Private Security Agencies (PASARA), etc.
- c) Submission of requisite Bid Security (or Bid Security Declaration, if allowed) or proof of exemption therefrom
- d) free from Financial insolvency, Debarment or Convictions;
- e) A consistent history of litigation or arbitration by the bidder may result in disqualification;
- f) free from 'Conflict of Interest' with other bidders, which may affect fair competition.
- g) Restriction on participation as per Government Policies:
 - i) For Class-II Local Suppliers and Non-Local bidders as per the Make-in-India policy.

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

4.2. Legal Status of Bidders

4.2.1. Natural Persons

1. Individual consultants

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

2. Retired Government Servants

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

- d) However, for part-time non-exclusive engagements, Port may fix remuneration on per day/ month or lump-sum basis.

4.2.2. Private and Public Entities:

1. Consultancy Firms

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

2. Non-governmental Organizations (NGO)

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

3. Specialized Agencies and Institutions

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

4.2.3. Association of several Bidders

1. Sub-contracting:

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

- c) Despite any approval granted by the Port for such arrangements, the Bidder/ Contractor shall be solely and directly responsible for executing sub-contracted portions of the contract.
- d) The total value of the sub-contracting portion of services must not exceed the per cent of the contract price as specified in the Tender Document/ Contract (if not so specified 25 (twenty-five) percent).
- e) Sub-contracting by the contractor without the approval of the Port shall be a breach of contract.

2. **Consortium of consultants:** In large and complex assignments consultants may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons.

- a) Such an association may be for the long term (independent of any particular assignment) or for a specific assignment.
- b) The consortium may take the form of a Joint Venture (JV). In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a JV or sub consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants/ service providers must become the lead member of the consortium. The Port only deals with the lead member of consortiums for all the purposes.
- c) Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). Maximum number of partners in JV shall be limited (say – three).
- d) In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to meet (financial soundness) individually and separately.
- e) In this case it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit in case of experience of particular consultancy and financial turnover, if any.

3. **Foreign Bidders & Foreign experience**

- i) The bidder shall have to be an entity registered in India in accordance with law. Indian subsidiaries of foreign bidders are eligible to participate in the

bidding process provided they meet the qualifying criteria in terms of capability, competency, financial position, past performance etc.

- ii) Foreign bidders can also participate in the bidding process provided they form Joint Venture with any bidder registered in India in accordance with law.
- iii) However, Restriction of participation of bidders from certain countries having land borders with India are also applicable

Chapter-5

Governance Issues in Procurement of services

5.1. Governance Issues

5.1.1. Standards (Canons) of Financial Propriety

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

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

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

5.1.2. Right to Information and Proactive Information Disclosures

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

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

5.1.3. Code of Integrity for Public Procurement (CIPP)

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

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

5.2. Integrity Pact (IP)

1. The Pre-bid Integrity Pact is a tool to help governments, businesses, and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.
2. Ministry of Finance, Department of Expenditure have mandated all the autonomous bodies to incorporate Integrity Pact (as per format in Annexure 14) depending on the nature of procurements/ contracts above a threshold value.
3. The nature of procurement and threshold of value is to be decided by the Port with approval of the Board. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure. Detailed Integrity Pact provisions are given in Appendix-CSM-S3/A5)

5.3. Development of New Sources and Registration

Empanelment/ Pre-qualification of Firms

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

5.4. Debarment of Suppliers

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

5.5. Enlistment of Indian Agents

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

5.6. Grievances and its Redressal

1. Any supplier, contractor, or consultant that claims to have suffered, or is likely to suffer loss or injury, due to a breach of fundamental principles of procurement by the Port, may make an application for review of such decision, action or omission, within a period of five (10) days from the date of such decision or action, to the designated officer named in the tender documents in this regard (or the Head of the Port, if not so specified), specifying the ground(s) and the relevant clauses of the tender documents. This grievance redressal mechanism is apart from the Vigilance channel of complaints. Unsuccessful Bidders may seek de-briefing regarding the rejection of his bid, in writing or electronically, within 10 days of declaration of techno-commercial or financial evaluation results.
2. Only a directly affected bidder can represent in this regard:
 - a) Only a bidder who has participated in the concerned procurement process i.e., pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
 - b) In case pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder has qualified in pre-qualification bid;
 - c) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
 - d) Following decisions of the Port in accordance with the provision of internal guidelines shall not be subject to review:
 - i) Determination of the need for procurement;
 - ii) Selection of the mode of procurement or tendering system;
 - iii) Choice of selection procedure;
 - iv) Complaints against specifications/ ToR/ Activity Schedule except under the premise that they are either vague or too specific to limit competition may be permissible.
 - v) Provisions limiting participation of bidders in the procurement process; in terms of policies of the Government.
 - vi) Provisions regarding purchase preferences to specific categories of bidders in terms of policies of the Government
 - vii) The decision to enter into negotiations with the L1 bidder;

- viii) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
- ix) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/contractor.

3. Within five working days of receipt of the complaint, the designated Officer shall acknowledge the receipt in writing to the complainant indicating that it has been received, and the response shall be sent in due course after a detailed examination. The redressal of the grievance must be completed within 30 (thirty) days of its receipt. The designated officer would call comments of concerned procurement officers and take a view about further processing of the grievance and may also decide whether the process of procurement should be put on hold for the time-being or not.
4. If the designated officer, on receipt of comments of relevant officer, finds complaint to have substance, appropriate and feasible remedial measure should be initiated. If the grievance is resolved or if the grievance is found to be unwarranted, the final decision shall be informed to the aggrieved party in writing after approval by the competent authority of the procurement.
5. If the grievance is not redressed within 30 days, or if the bidder or prospective bidder is aggrieved by the decision of the designated officer, the bidder or prospective bidder may file an application for redressal to the appellate authority mentioned in the tender documents (Head of Port, if not so specified) within a period of fifteen days thereafter.

5.7. Investigations of Serious Deviations from Procurement Guidelines

1. Suo-moto or based on representations from bidders, the designated officer (or appellate authority) may if he/she considers that an investigation is necessary or desirable for the purpose of preventing, investigating, or detecting serious deviations from procurement guidelines, appoint a person or persons at sufficiently higher level than the officers involved, to investigate any matter related to the conduct of any procurement proceedings, or the conclusion or operation of any procurement contract. The appointed Investigator(s) shall carry out the investigation and report the compliance to the procurement guidelines, to the appellate authority.
2. If the designated officer (or appellate authority) is satisfied that there has been a contravention of procurement guidelines in relation to any procurement proceedings or procurement contract, he may initiate such action as, in his opinion, is necessary to rectify the contravention, including:

- a) Handing over the case for further investigation to CVO (or through CVO to CBI), if there are aspect, which require criminal/ police investigations.
- b) Registration of FIR and instituting legal proceedings for prosecution in appropriate court of Law.
- c) annulment of the procurement proceedings;
- d) cancellation of the procurement contract, if legally feasible;
- e) In case any individual staff is found responsible, suitable disciplinary proceedings should be initiated against such staff under the conduct rules.
- f) In case of complicity of any bidder is proved:
 - i) removal of concerned firm from list of registered firms
 - ii) debarment of the bidders, if warranted
 - iii) reporting the matter to Competition Commission of India (CCI), in case of anti-competitive actions by the bidder.
- g) If the grievance is due to inadequacy of procurement guidelines or due to lack of understanding of the staff, remedial action to address such lacunae may be initiated, without repercussion to the concerned staff.

5.8. Conduct of Public Servants in 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/Contractors/Consultants/Service Providers : Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers/contractors/Consultants/Service Providers having official dealings or its associates (especially against Rate Contract).

Mitigation-3

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

Risk-4

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

Mitigation-4

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

Risk-5

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

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

Mitigation-5

- a) Officers related to the tender or execution process would depend on the organisational structure and sensitivity of their role in procurement. It may cover key officials (and any external consultants/ advisors) involved in making a recommendation, various approvals, or making an important decision at any stage in procurement – i.e., during need determination/ indenting; Tender Document preparation/ preparation of comparative tabulation; Technical and Financial evaluation of Bids; negotiation/ signing of Contract; execution of contract; payments to the contractor.
- b) Conflict of Interest can be in the nature of significant business interests, family relationship, regular social interactions, close personal friendships. A conflict of interest (actual, potential, or perceived) can arise when any senior executive (or team handling the bidding) at the firm bidding for the contract (called firm's team) has such relationship/ transaction with officials (or their close relatives) mentioned in sub para-a) above.

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

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

Chapter-6

Types of Contracts

6.1. Types of Contracts

1. There is different basis for linking payments to the performance of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of assignment. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes, and non-performance/failure of the contract.
2. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption along with risks and mitigation measures. Mostly used types of contracts are:
 - a) Lump sum (Firm Fixed Price) contract;
 - b) Time based (Retainer-ship) contracts;
 - c) Percentage (Success Fee) contract;
 - d) Retainer-ship cum Success fee-based contract;
 - e) Indefinite delivery contract.

6.2. Lump Sum (Firm Fixed Price) Contract:

1. The lump sum (firm fixed price) contract is the simplest form of contract and wherever feasible; the Port shall use this form of contract. Consultant's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation.
2. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. Bidders quote lump sum price for the required quantum of services. They may also be asked to quote unit rate for the consultancy output, to be used in case of variation etc.
3. Schedule of Requirement shall indicate the quantum of the Consultancy outputs, its performance standards, and the timeline/ milestones of its delivery. Contract may specify parts of payments to be released at specified timelines/ milestones.

4. In view of Risks mentioned below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

5. Lump Sum Contracts - Risks and Mitigations

Risk-1

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

Mitigation-1

Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the required output of the consultants/ service providers are clearly defined. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.

Risk-2

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

Mitigation-2

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

6.3. Time-Based (Retainer-ship) Contract

1. In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who in consultancy contracts are normally named) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts since the consultant/ service provider are retained for a pre-decided contract period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances.
2. Schedule of Requirement shall indicate the quantum of inputs required (Man-hours of different key and non-key personnel), qualifications of key-personnel,

reimbursable items, and the timeline/ milestones of its deliverables. Contract may specify parts of payments to be released at specified timelines/ milestones.

3. This type of contract is appropriate when Lump sum contract is not feasible due to difficulties in defining the scope and the length of services, either because the inputs required for attaining the objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary.
4. Because of risks and mitigations mentioned below, this type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments etc.
5. Time-Based Contracts - Risks and Mitigations

Risk-1

The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.

Mitigation-1

The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.

Risk-2

Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use paid staff in a dilatory and un-productive manner.

Mitigation-2

Contracts need to be closely monitored and administered by the 'Port' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to Competent Authority should be instituted to enable supervision.

Risk-3

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

Mitigation-3

This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, Competent Authority should review justification for extension of the contract.

6.4. Percentage (Success/ contingency Fee) Contract

1. Percentage (Success/ Contingency Fee) contracts directly relate the fees paid to the consultant/ service provider to the estimated or actual project cost, or the cost of the goods procured or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The final selection is made among the technically qualified consultants who have quoted the lowest percentage while the notional value of assets is fixed.
2. Schedule of Requirement shall indicate the estimated value of assets/ transactions to be handled as well as the contract Period (one year, unless otherwise stipulated) over which such volume shall be availed. However, there shall be no firm commitment to avail the entire value of transactions within the contract period.
3. Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural services; procurement and inspection agents.
4. **Percentage Contracts - Risks and Mitigations**

Risk-1

The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed.

Mitigation-1

The contract should include provision for evaluation of quality, scope and the timing of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.

Risk-2

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

Mitigation-2

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

Risk-3

Bias against Economic solutions: Since the percentage payment is linked to the total cost of the project, in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged.

Mitigation-3

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

6.5. Retainer and Success (Contingency) Fee Contract

1. In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee (Percentage based), the latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.
2. Due to risks and mitigations discussed below, Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organizational restructuring/ change.
3. **Retainer-ship and Contingency Fee Contracts - Risks and Mitigations**

Risk-1

All Risks as applicable to both Percentage Contracts and Time-Based contracts are encountered in this case.

Mitigation-1

Same mitigation strategies as in both Percentage and Time-Based contracts may be adopted in this case.

6.6. Indefinite Delivery Contract (Price Agreement)

1. These contracts are used when Port needs to have "on call" specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Port for the quantum of work that may be assigned to the consultant. The Port and the firm agree on the unit rates to be paid, and payments are made on the basis of the time/ quantum of service actually used. The consultant/ service provider shall be selected based on the unit rate quoted by them for providing the services.
2. Schedule of Requirement shall indicate only a tentative estimate of the volume of required service as well as the contract Period (one year, unless otherwise stipulated) over which such volume is likely to be availed. The Services shall be availed on-call as and when needed by the Port without any commitment regarding the volume of services.
3. Due to risks and mitigations discussed below, Indefinite Delivery contracts are commonly used to retain "advisers" or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.
4. **Indefinite Delivery Contracts - Risks and Mitigations**

Risk-1

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

Mitigation-1

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

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

A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to Competent Authority should be instituted to enable supervision. In the report a monthly payout benchmark may be

kept, above which the report may be required to be sent to a level above Competent Authority.

Risk-2

The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.

Mitigation-2

The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates

Risk-3

Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use resources in a dilatory and un-productive manner.

Mitigation-3

Contracts need to be closely monitored and administered by the 'Port' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.

Risk-4

Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.

Mitigation-4

This type of contract should include an upper limit of total payments to be made to the consultants/ service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, Competent Authority should review justification for extension of the contract.

Chapter-7

Systems of Selection

7.1. Systems of Selection of service providers

1. Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important though indirect determinant for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is normally done in a two-stage process.
 - a) In the first stage, likely capable sources are shortlisted, on the basis of qualification and experience requirements for the given assignment for further consideration, if need be, through an 'Expression of Interest' (EoI) through advertisement. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. In rare cases where less than three Consultants become eligible as per short-listing criteria, and the criteria cannot be relaxed, procurement may be continued with the approval of the Competent Authority.
 - b) In the second stage, the shortlisted consultants are invited to submit their technical and financial (RfP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.
2. The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Port to engage and supervise the assignment, as well as the value of procurements. Hence different systems of selection of consultants/ service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment. The selection method chosen depends to some extent on this assessment. Selection of system of selection also should consider the likely field of Bidders.
3. The nomenclature of various selection methods below is in line with generally prevalent nomenclature:
 - a) Price based System - Least Cost Selection (LCS);

- b) Quality and Cost Based Selection (QCBS);
- c) Direct Selection: Single Source Selection (SSS)
- d) Fixed Budget – based Selection (FBS)

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

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

design of non-complex Consultancy/ services/ works) where well-established practices and standards exist.

3. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided if a selection method other than LCS is to be used.

4. **Least Cost Selection - Risks and Mitigations**

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

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

7.3. Quality and Cost Based Selection (QCBS)

1. In QCBS system of selection, both the quality of the proposal and the cost of the services are considered as deciding factors. This approach is employed when the quality of deliverables is crucial, but the cost of service or work cannot be ignored.
2. Quality/ Technical scores are assigned to proposals based on specified quality criteria. Minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal is prescribed and proposals below this benchmark are not considered for Financial evaluation. The Financial Proposals are also given cost-score

based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them.

For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the "cost" shall be chosen, considering the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the highest total score shall be selected. It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the 'cost' approximates the price based LCS system. This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal.

3. A suggestive weighting of scores for QCBS is as under: (Rule 192 of GFR 2017)
 - i) High Complex / Downstream Consequences / specialized assignments:
Use QCBS with higher technical weightage
Quality / Cost Weighting (%) – 80/20
 - ii) Moderate complexity
Majority of cases will follow this range
Quality / Cost Weighting (%) – 65-75/ 35-25
 - iii) Assignments of a standard or routine nature such as auditors/ procurement agents handling the procurement
Use of LCS is appropriate
Quality / Cost Weighting (%) – 50-60 / 50-40

4. QCBS - Risks and Mitigations

Risk-1

Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Port to monitor the assignment.

Mitigation-1

Selection of QCBS should be justified and applied only under circumstances mentioned above.

Risk-2

Weightage of Technical: Cost may not be proportional to quality requirements.

Mitigation-2

Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.

Risk-3

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

Mitigation-3

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

Risk-4

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

Mitigation-4

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

7.4. Direct Selection: Single Source Selection (SSS)

1. Under some special circumstances, it may become necessary to select a particular consultant/ service provider where adequate justification is available for such single-source selection in the context of the overall interest of Port. In Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants', this is called DNS, which is not the generally prevalent nomenclature. (Rule 194 of GFR 2017). The selection by SSS/ nomination is permissible under exceptional circumstance such as:
 - a) tasks that represent a natural continuation of previous work carried out by the firm;

- b) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
- c) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
- d) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
- e) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Port. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

2. Port shall ensure fairness and equity, and shall have a procedure in place to ensure that:

- a) the prices are reasonable and consistent with market rates for tasks of a similar nature; and
- b) the required consultancy services are not split into smaller sized procurement.

3. All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of the Board on quarterly basis.

5. **SSS - Risks and Mitigations**

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

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

7.5. Fixed Budget based Selection (FBS) for consultancy services:

1. GFR 2017 provides three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget based Selection (FBS) method is now also allowed for selection of consultants. (General Instructions on Procurement and Project Management - DoE's OM NO.F.1/1/2021-PPD dtd 29th October, 2021)
2. In FBS, the selection process considers both the quality of proposals and the cost. FBS is a competitive method, encouraging consultants to provide high-quality services within the defined budget constraints.:
 - a) **Fixed Budget:** In the request for proposal (RFP) document, a specific fixed budget is specified. Consultants must adhere to this budget, and their proposed cost cannot exceed it.
 - b) **Quality Assessment:** Consultants submit their proposals, and the evaluation considers the quality of these proposals. The proposal that scores the highest in quality (and is within the specified budget) is selected for award of contract. This assessment ensures that the selected consultant meets the project's requirements effectively, within the stipulated budget.
3. FBS may be used when:
 - a) the type of consulting services required is simple and/or repetitive and can be precisely defined; and
 - b) the budget can be reasonably estimated, and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
 - c) the budget is sufficient for the consultant to perform the assignment.

Chapter-8

Modes of Procurement

8.1. Modes of Procurement

1. Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and tendering systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes. Port may also publish its own Schedule of Procurement Powers (SoPP) delegating such powers within the entity. A suggested format for SoPP is given at Annexure-1.
2. However, as mentioned in Para 1.3 (Applicability of this Manual), for procurements financed by Loans/Grants extended by International Agencies, like the World Bank, Asian Development Bank etc., the procurement procedures, as finalized and incorporated in the Articles of Agreements with such agencies for relevant Loans/ grants after consideration and approval of the Ministry of Finance are to be followed.
3. The various modes of procurement that can be used in public procurement are:
 - a) **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 in this manual, it is referred as OTE);
 - ii) Global Tender Enquiry (GTE also known as International Competitive Bidding – ICB, but in this manual, it is referred as GTE)
 - iii) Rate Contracts
 - 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)

- 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) Single Tender Enquiry (STE)

8.2. 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 and financial capabilities;
 - c) For requirements that are ordinarily available in the open market, it is necessary to evaluate competitive offers to decide the most suitable and economical option available and
 - d) When requirements are not available from known sources or sources are presently limited and need to be made broad-based. In such situations, even for procurements below Rs. 50 (Rupees Fifty) lakhs, the OTE mode may be used if warranted (Rule 161 of GFR 2017).

8.2.1 Terms and Conditions

1. There should be no restriction on participation by prospective bidders who meet the eligibility criteria. Especially prior registration with the Port should not be insisted upon. However, bidders who are already registered are also free to participate.
2. Advertisements in such cases should be given on the Government e-Marketplace (GeM) as well as Central Public Procurement Portal (CPPP) at

www.eprocure.gov.in and also publish all advertised tender enquiries on the Port website.

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

8.2.2 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.

8.3. Global Tender Enquiry (GTE)

Global Tender Enquiry is similar to Open Tender Enquiry but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit (in case the requirement includes supply of equipments). It is aimed at inviting the participation of inter-alia foreign firms.

In case it is felt that likely consultants may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries.

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

8.3.1 Terms and Conditions

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

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

8.3.3. Procedure to be followed for approvals of GTE

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

- a) Market assessment should be done by the Port. Only after no Indian supplier/service provided is found, a GTE should be issued.
- b) Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders.
- c) These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.

- d) The proposal for approval shall be submitted by the Port through Ministry of Shipping, Ports & Waterways (Administrative Ministry. The proposals submitted by individual Ports will not be entertained.
- e) The proposals shall be submitted along with duly filled format.

8.3.4 Exemptions/ Clarifications

- a) On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases.
- b) On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc., which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases.

8.3.5. Certificates to be issued

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

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

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

the Supplier for the supply of a definite quantity/service, that supply order becomes a valid and binding contract.

2. The following types of services can be advantageously procured through rate Contracts:
 - a) Service that are regularly or repetitively required by more than one department in the Port.
 - b) The required services cannot be accurately forecast.
 - c) Individual department requirements of Port may be small, but the total aggregate requirements of all the departments may be considerable amount per annum.
 - d) The service has detailed scope and description.
 - e) Prices of the services are stable, or if prices are variable, they can be determined through a price variation clause.
3. **Merits of Rate Contract:** The Rate Contract system provides numerous benefits to both the Port and the Service provider as indicated below:
 - a) **The benefit to Users:**
 - i) Competitive and economical price due to aggregation of demands.
 - ii) Saves time, effort, person-hours, and related costs involved in the time-consuming and repetitive tender process. It thus reduces lead time for procurement of services.
 - iii) Availability of quality services with full quality assurance backup.
 - iv) Enables procurement as and when required and thus reduces costs of continuous engaging.
 - v) Provides one single point of contract to procure such services.
 - b) **Benefit to Service providers:**
 - i) Reduces marketing costs and efforts.
 - ii) Eliminates repetitive tendering and follow-up actions with multiple authorities.
 - iii) Provides single-point contact within the departments of the Port.
 - iv) Aggregation of Port's demand leads to economic deployment of key persons/technical experts.
 - v) Improves the credentials of the company.
 - vi) Promotes quality discipline.

8.4.1 Terms and Conditions

1. Conclusion of Rate Contracts, including Parallel Rate Contracts

- a) The Port can enter in to a rate contract for repetitive services. A nodal department can enter in to a rate contract on behalf of all departments. An estimate of the annual requirements of different ultimate users is needed. The agency entering the Rate Contract should post the salient details of the entire rate contracted for goods or services.
- b) Rate contract enquiries should preferably be through eProcurement or Open Tender Enquiry, but Limited Tender Enquiry/ Single Tender Enquiry can also be used if justified by the nature of the requirement. Specific special terms and conditions for the Rate Contract should be added to the Tender Documents.
- c) Performance against earlier/current rate contracts of past/ current rate Contract holders shall be critically reviewed before they are considered for award of new rate contracts. Specific performance and achievement criteria as on a selected cut-off date are to be evolved for this purpose and incorporated in the tender enquiry document. The tenderers will be asked to furnish the relevant details (along with their bids) to enable the Port to judge their performance and achievement against the past/current rate contracts.
- d) Procedures stipulated for evaluation of bids and award of contract shall be applicable mutatis mutandis in the finalisation of rate contract, including provisions for negotiations/ counter-offer and splitting of contracts (parallel contracts).
- e) Depending on the anticipated demand of the services, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc., parallel rate contracts may be awarded to more than one if possible. For transparency and to avoid criticism, all such parallel rate contracts are to be issued simultaneously, as far as feasible.

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

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

- a) The Port may prescribe the amount of Bid Security in the Tender Document.
- b) No quantity/man days is mentioned in the Schedule of Requirement; only the anticipated drawable quantity/man days is mentioned without commitment.
- c) The Port reserves the right to conclude one or more than one rate contract for the same item/service.
- d) The Port and the Supplier may short-close the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen to thirty days.
- e) The Port can renegotiate the price with the rate contract holders, even during the validity, if market conditions change significantly or undertake repeat competitive bidding through open/ advertised tenders on the same terms and conditions, including specifications/mandays during the validity period of existing valid R/Cs. In such cases, the existing R/C holders can bid, apart from the new eligible bidders, and equal and fair opportunity would be provided. If the prices received are found lower than the existing R.C. prices, new R/Cs may be awarded at reduced prices and existing R/Cs at higher prices may be short-closed, giving adequate notice if they do not match such reduction in prices under the fall clause.
- f) In an emergency, the Port may procure the services through an adhoc contract with a new supplier.
- g) The Port and the authorised users of the rate contract are entitled to place supply orders up to the last day of the validity of the rate contract, and though supplies against such supply orders will be delivered beyond the validity period of the rate contract, the terms & conditions of the rate contract will guide all such supplies.
- h) **Fall Clause:** The fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or Organisation during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be allowed to reduce their price by

notifying the reduced price to them, giving 07 (seven) days to intimate their revised prices, if they so desire, in a sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing a price reduction (after getting the rate contract) under the guise of the Fall Clause. As mentioned in the preceding paragraph, this situation must be handled similarly. It is, however, very much necessary that the Port keeps a particular watch on the performance of such rate contract holders who reduce their prices on one pretext or another. If their performances are not up to the mark, appropriately severe action should be taken against them, including deregistering them, suspending business deals with them, debarring them for upto two years from participating in the tender enquiry floated by the Port etc. The provisions of the fall clause will, however, not apply to the following:

- i) Sale of goods or services as original equipment prices lower than the price charged for routine replacement;
- ii) Sale of goods or services at lower prices –
 - 1) on or after the date of completion of placement of order of goods by the Port, under the existing or previous Rate Contracts
 - 2) under any previous contracts entered with the Central or State Government Departments, including new undertakings (excluding joint sector companies and/or private parties) and bodies.

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

5. Placement of Supply/work Orders:

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

- b) Once a Rate Contract is available, all nominated departments must mandatorily procure the item/services only through supply orders on the rate contract holders. In case of an emergency, if directly procures rate contracted goods or services from the suppliers, the prices to be paid for such goods or services shall not exceed those stipulated in the rate contract, and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. However, they may be permitted to procure a small value of their requirements directly (say up to Rs. One Lakhs at one time and not more than Rs 5 lakhs annually) following relevant procedures.
- c) The Port may stipulate an upper threshold of value for supply orders received against the rate contract by the RC holder. Except with prior approval of the nodal department of the Port, the Contractor shall not comply with the supply orders received from various departments exceeding such threshold amount.
- d) All parallel RCs for an item, even at differential rates, are assumed to be at reasonable rates. The Port can select any RC holder, following transparent and equitable criteria. For selecting the one rate contract holder in case of parallel Rate Contracts for ordering, the following factors may be kept in view:
 - i) The rate contract price.
 - ii) The past performance of firms with reference to their capacity, quality of supplies as well as timely delivery of the goods/services. The Nodal officer of the Port should maintain suitable records for past performance with respect to timely delivery and quality.
 - 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 / services are only to be delivered within a reasonable time-which is a rather vague concept. But where there has been an unreasonable delay in delivery, the Nodal officer has the right to give the Contractor notice, fixing a reasonable time for delivery of the

goods/services and stipulating that delivery within the time specified shall be the essence of the contract. If the goods/services are not delivered within this period, the supply order can be cancelled and deficient performance is noted for future Rate contracts.

- f) However, in cases where the delivery date stipulated in the relevant order has been expressly agreed to by the supplier in writing before placing the relevant order, liquidated damages can be recovered from the supplier on account of delay in delivery beyond the stipulated delivery date. Therefore, it is advisable that, before placing the supply order on a rate Contract holder, a commitment is obtained from him for the delivery period.

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

8.5. 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.

8.5.1 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 eProcurement/ ePublishing; 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,
 - 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 twophase tendering).
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. Due consideration should be given while framing PQC to its effect on the adequacy of competition. PQC should, therefore, be carefully decided for each procurement with the approval of CA for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.
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.

8.5.2 Single Stage Pre-qualification:

1. In 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;

8.6. Limited Tender Enquiry (LTE)

LTE is a restricted competition procurement, where a preselected panel of consultants (on the list of registered consultants for the subject matter of procurement) are directly approached for bidding for 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 up to to Rs. 50 lakhs (Rupees Five Lakh to Fifty Lakh).* (Rule 162 of GFR 2017)

8.6.1 Terms and Conditions

1. The shortlist of Consultants from the list of registered consultants for the subject matter of procurement to whom it is proposed to send tender documents shall be approved by the competent authority before floating the tender.
2. In case the number of registered bidders for an item/work is large and unwieldy, a transparent system of rotation of invitation to bid may be used to keep the invited shortlist to a manageable number (say 8 to 12).
3. In the off-line tendering, copies of the tender documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to the panel of consultants on the list of registered consultants for the subject matter of procurement. Further, the Port should also mandatorily publish its limited tender enquiries on GeM , Central Public Procurement Portal (CPPP) and their own website.
4. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved Consultants are available, LTE may be sent to the available approved Consultants with the approval of the Competent Authority, duly recording the reasons. Efforts should then be made to identify a higher number of approved Consultants to obtain more responsive bids on a competitive basis.
5. A simplified Tender Document with brief terms and conditions should be used instead of a detailed Tender Document. In any case, all registered consultants, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of "general conditions of contract" as part of the

registration application, which is applicable to such procurements, in addition to these brief "terms and conditions" in LTE tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

6. In domestic tenders, any bid in foreign currency should be summarily rejected.
7. Since selected bidders are normally registered with the Port, Bid Security and Performance Security are normally not taken in LTE.

8.7. Special Limited Tender Enquiry (SLTE)

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

8.7.1 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.
4. Unlike LTE, Bid Security and Performance Security are taken in SLTE as in OTE tenders.

8.8. Single Tender Enquiry (STE)

A tender invitation to one firm only is called a single tender. This mode may be the shortest, but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only subject to the reason for such decision being recorded and approval of the competent authority obtained. This may be followed when the Port is of the opinion that the Consultant has specific knowledge and experience in the field. (*Rule 166 (ii) of GFR 2017*)

Chapter-9

Tendering Systems

9.1. Tendering Systems

1. Tendering systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source, and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of tendering systems may be used. The various Tendering Systems that are used in public procurement are:
 - a) Single Stage Tendering System
 - i) Single Stage Single Envelope System
 - ii) Single Stage Two Envelopes System (Two Bid System) (Rule 163 of GFR 2017)
 - iii) Single Stage Multiple Envelopes System with pre-qualification.
 - b) Two Stage Bidding - Expression of Interest Tenders – Market Exploration/ Short-listing (Rule 164 of GFR 2017)

9.2. Single-Stage Tendering System

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

9.2.1. Single Stage Single Envelope System:

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

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

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

9.3. Single Stage Multiple Envelope System (1S3E)

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

This system is followed in works which do not lend themselves for technical specification / criteria or type of key personnel required to be frozen at the initial floating stage itself. This may require a wider cross-pollination of technical ideas and examination of various possibilities. That means the port is not sure about the

technology or solution or expertise of key personnel and the man days required etc, which they would like to go for the intended procurement. To deal with such cases which require a more critical and detailed evaluation of the technical criteria, three cover system is recommended to be adopted.

- a) In this, as a first stage, a pre-bid conference shall be held with the prospective bidders, the port presenting the perception of work in the conference with the contemplated technical criteria and the expertise required. The prospective bidders can present their ideas and their technical perception in the pre-bid conference to arrive at a technical framework for the contemplated work. Having thus arrived at a common platform, the prospective bidders shall submit their bids in three envelopes.
- b) The first envelope will have the documents relating to the fulfilment of eligibility criteria in the areas of experience, proposed key personnel, completion of past work as specified in the tender document, financial status along with the details of plant and machinery, etc.
- c) Only the technical bids of those bidders, who have qualified in envelope-I will be opened for the consideration of second envelope, the technical bid which give the technical details of their offer. Generally, at pre-defined date a conference is arranged to discuss the various offers submitted by various bidders, to discuss the merits and demerits of the technical offers. The bidders who offer the most viable and technologically superior technical solution /expertise are declared. In the technical bid, the tenderers can give alternative designs/experts required also, whose technical acceptability will be decided by the concerned authorities. After finalization of technical bid, if required, tenderers may be given chance to modify their financial bids (envelop-III) in case of changes in the technical specifications etc.
- d) The third envelope containing the financial bids of only those tenderers who have successfully qualified themselves in the technical bid will be opened and evaluated.

9.4. Two-Stage Bidding - Expression of Interest Tenders

Expression of Interest Tenders – Market Exploration

In the case of green-field/ blue-sky projects, where the equipment/ plant/infrastructure to be procured/planned is complex, the Port may not possess the full knowledge of either the various technical solutions available or the likely sources for such products/services in the market. To meet the desired objectives of a transparent procurement that ensures value for money and simultaneously ensures the upgradation of technology & capacity building- it would be prudent to invite an

Expression of Interest (EoI) Bids as a first stage of the two-stage tendering system to explore the market and expertise of the consultancy firms and finalise specifications based on technical discussions/presentations with the experienced Consultants in a transparent manner. In less complex cases, a market consultation through a pre-NIT conference may suffice instead of two-stage tendering.

Chapter-10

Channels of Procurement

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

10.1. Electronic Procurement

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

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

10.2 . Mandatory Procurement of Services through (GeM)

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

10.3. Procurement through Centralized Agencies or other Organizations

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

Chapter-11

Bid Invitation Process

11.1. Preparation and Uploading/ Floating of Tender Documents

11.1.1. Model Tender Documents

Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Consultancy Services on 29th October 2021 and in April 2023. Port may customise relevant MTD for preparing tender documents for their procurements. Guidance notes annexed to the MTDs, details the process of customisation of MTD for an Organisation and for each procurement. Port may issue instructions regarding appropriate delegation of authority for approval of the Tender Documents before these are floated/ uploaded.

11.1.2. Tender Documents

1. The tender document (Notified under para 12 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021) is the fundamental document in the public procurement process and becomes part of the contract agreement after award of Contract. A carefully prepared tender document avoids delays and complaints. This will also attract more bidders to formulate and submit their competitive bids with confidence. Hence, it is worth spending time and effort on this even in cases of urgency.
2. Provisions/ clauses in the tender document should be clear, self-contained, and comprehensive without any ambiguity. to avoid differences in interpretation and possible disputes, time overrun, cost overrun and quality compromises.
3. While tender document should be complete in itself, it may be slightly different for various categories of procurements. Model Tender Documents, issued by the DoE, which comply with all these following requirements may be used with due customization, as per the guidance notes annexed to the MTDs. The tender document must necessarily address the essential aspects mentioned below.
 - a) Description of the subject matter of procurement, its specifications/ drawings including the quality/ nature/ quality assurance, quantity, time and place or places of delivery/ completion;
 - b) Limitation or preference for participation by bidders in terms of the Government policies;
 - c) The procedure as well as date, time, and place for obtaining, submitting, and opening of the bids;

- d) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which Port will address the bidder's questions;
- e) Criteria for determining the responsiveness of bids, criteria as well as factors to be considered for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous bidder should be clearly indicated in the tender documents;
- f) The qualification Criteria for the bidders should take care of its capability to perform the resultant contract successfully, balancing considerations of quality, time, and cost.
- g) Commercial terms and conditions e.g., payment terms, tax implications, respective obligations of the Port and the suppliers, compliance framework for statutory and other norms. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- h) Tender document should include a clause that "if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered."
- i) Procedures for redressal of grievances or complaints from aggrieved bidders;
- j) If applicable, Integrity Pact clause and format to be signed, shall be included;
- k) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the tender document; and
- l) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

4. Eligibility criteria specifies the very basic criteria that bidder should meet to be considered a responsive bid to be evaluated further beyond the preliminary evaluation/ screening of bids.

5. **Qualification Criteria:** Technical and Financial qualification Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the qualification criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

6. **Evaluation Criteria:** Port may include in the evaluation criteria in the Tender Document based on one or more of quality, price, technical merit, running costs,

cost- effectiveness, and technical assistance, period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or has not been specified in the Tender Document.

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

11.2. Preparation of the Request for Expression of Interest (REoI) Document

11.2.1. Basic Considerations

1. Department of Expenditure (DoE), Ministry of Finance, Government of India has inter-alia issued Model Tender Documents for Procurement of Consultancy Services which includes a Model REoI for reference.
2. It is important for the Port to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the

process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.

11.2.2. Contents of REOI

The EOI document shall contain following sections:

1. **Part I: REOI process**
 - a) Section I: Request for Expression of Interest (REOI)
 - b) Section II: Appendix
 - c) Section III: Qualification Criteria
2. **Part II: Schedule of Requirements**
 - a) Section IV: Terms of Reference
3. **Part III: EOI Submission Formats**
 - a) Form 1: EOI Form (Covering Letter)
 - i) Form 1.1: Consultant Information
 - ii) Form 1.2: Eligibility Declarations
 - b) Form 2: Qualification Criteria – Compliance
 - i) Form 2.1: Performance Capability Statement
 - ii) Form 2.2: Financial Capability Statements
 - iii) Form 2.2.1: Financial Statement
 - iv) Form 2.2.2: Average Annual Turnover
 - c) Form 3: Checklist for Consultants
- d) Other Annexures:
 - i) Annexure 1: Authorisation to Attend Pre-EOI Conference
 - ii) Annexure 2: Code of Integrity
4. **Section I: Request for Expression for Interest (REOI):** Is a formal invitation for Expression of Bidders from interested bidders.
5. **Section II** is the Appendix to the REOI, where variable parameters and information related to this specific REOI process are summarised.

6. Section III: Qualification Criteria:

- a) This section lays down the qualification criteria which shall be applied by the Port for short listing the consultants. The REoI should ask for sufficient information so that the Port may evaluate the consultant's capabilities and eligibility to undertake the assignment. The Consultants must be asked
 - i) core business and years in business;
 - ii) requisite experience with assignments similar in nature in general and specific sectors relevant to the subject assignment;
 - iii) technical and managerial organisation of the firm; and
 - iv) general qualifications and number of key staff.
- b) In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services.
- c) Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the RfP.
- d) No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested.
- e) Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent. It may indicate the extent of dispensation, if any, allowed for startups.
- f) Unless otherwise stated in Section II: Appendix, Consultants may associate with other firms to enhance their qualifications but should indicate clearly whether the association is in the form of a joint venture/consortium (JV/C) and/or a sub-consultancy.

7. Section IV: Terms of Reference (TOR):

This section describes the background, purpose/ objectives, description/ scope of work, deliverables/ outcomes, inputs to be provided by the Port; and timelines of Consultancy Services (hereinafter called the 'Service') required. The 'Service' may include incidental Goods, Works, and other Services if so indicated therein. Any generic reference the 'Service' shall be deemed to include such incidental Goods, Works, and other Services. This may also include the place of execution of the assignment.

11.2.3. Important Provisions of REoI:

1. REoI contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing, and submitting a responsive bid, process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders, Code of Integrity in Public Procurement (CIPP), process of grievance redressal, and declaration of results. It also contains introduction/ overview of its contents. Other important provisions in a REoI are:
2. **Eligibility Criteria:**
 - a) Provisions relating to Eligibility Criteria, Conflict of Interest and applicable preferential policies regulate the participation of bidders of various categories and their agents. It also contains introduction/ overview of its contents.
 - b) It mentions the type of entities which may participate, specifically if JV/C are permitted to participate.
 - c) It shall also mention that the consulting company should be registered under applicable act with registered offices in India.
 - d) It also excludes insolvent, bankrupt, debarred, convicted, firms with conflict of interest from participation.
 - e) Restriction of participation of bidders from certain countries having land borders with India are also applicable.
 - f) In case JV/Cs are permitted, it should be made clear if the experience of the bidders as a member of JV would be considered or not. If yes, then the manner of aggregating qualifications of members of JV (say, only prorata experience proportionate to his %age share declared in JV MoU) may be mentioned.
3. **Joint Ventures in QCBS**
 - a) In conventional tenders, some bidders adopt 'name borrowing' and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.

- b) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

4. **Preferential Procurement Policies:** Preferential Procurement policies applicable to the EoI are mentioned (MSEs, Start-ups, Make in India etc.)
5. **EoI Validity:** EOIs shall remain valid for a period not less than 60 (sixty) days from the deadline for the EOI submission.
6. **Qualification Criteria:**
As mentioned earlier qualification criteria for shortlisting the bidders and its scoring/ marking scheme is detailed. It also specifies, if JV/C are permitted, how credentials of members of JV/C would be considered in evaluation.
7. **Terms of Reference (ToR):**
As mentioned earlier ToR describes the background, purpose/ objectives, description/ scope of work, deliverables/ outcomes, inputs to be provided by the Port; and timelines of the required 'Service'. At EoI stage ToR is relevant for bidders to decide, whether they are interested in bidding for this assignment. It is also relevant to decide specific sector of experience required in the qualification criteria. Normally ToR should be ready before REoI is floated, however, if detailed ToR is not ready, at least description/ scope of work, deliverables/ outcomes, inputs to be provided by the Port; and timelines of the required 'Service' should be included in REoI. REoI should contain a clause retaining right to make minor adjustments to ToR at the RfP stage.

11.3. Preparation of the Request for Proposals (RfP) Document

11.3.1. Basic Considerations:

Department of Expenditure (DoE), Ministry of Finance, Government of India has issued Model Tender Documents for Procurement of Consultancy Services for reference of all Ports.

11.3.2. The Request for Proposal (RFP)

1. The Request for Proposals (RfP) (Rule 168 of GFR 2017) is the bidding document in which the technical and financial proposals from the consultants are obtained.

For procurement of Consultancy Services, the RfP is sent only to the short-listed consultants. It contains the following sections:

- a) Section I: Request for Proposal Letter (RFPL) and its Appendix: Tender Information Summary (TIS)
- b) Section II: Instructions to Consultants (ITC)
- c) Section III: Appendix to Instructions to Consultants (AITC)
- d) Section IV: General Conditions of Contract (GCC)
- e) Section V: Special Conditions of Contract (SCC)
- f) Section VI: Terms of Reference (TOR)
- g) Section VI-A: List of Key Experts and Required Qualifications
- h) Section VII: Evaluation/ Scoring Criteria

2. Section I: Request for Proposal Letter (RFPL) and its Appendix: Tender Information Summary (TIS)

Section I – Request for Proposal Letter (RFPL and its Appendix – Tender Information Summary - TIS) provides a synopsis of information relevant for a Consultant to decide on participating in the RFP. RFPL states the intention of the Port to enter into a contract for the provision of consultancy services, details of the Port, and date, time, and address for submission of proposals.

3. Section II: Instructions to Consultants (ITC) and Section III: Appendix to Instructions to Consultants (AITC)

Section II: "Instructions to Consultants" (ITC), along with Section III: "Appendix to Instructions to Consultants (AITC)", contains all necessary information that would help the consultants prepare responsive proposals, and shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, pre-bid meeting, for seeking clarifications, and so on. The assignment/ job specific information in AITC include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on. The ITC shall specify the proposal validity period [normally 90 (ninety) days].

4. Section IV: General Conditions of Contract (GCC) and

5. Section V: Special Conditions of Contract (SCC) describe the conditions governing the resulting contract.

6. Section VI: Terms of Reference (TOR) and Section VI-A: List of Key Experts and Required Qualifications

- a) Section VI: Terms of Reference (TOR) describes the background, purpose/ objectives, description/ scope, deliverables/ outcomes, timelines, Port's inputs and counterpart personnel, statutory requirements of Services required etc.
- b) Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection) but shall indicate the expected input of key professionals (staff time).
- c) Section VI-A: 'List of Key Experts and Required Qualifications' describes the team composition, expertise, experience, and professional qualifications required for each Key Experts. Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment.
- d) Consultants may be encouraged to provide comments and suggestions on Terms of Reference, Counterpart Staff, Key Experts and Facilities to be provided by the Port' regarding these Sections.
- e) Simplified Technical Proposal: In LCS system of evaluation, since the technical scores are not ranked or weighted and added to Financial Scores, it would suffice if instead of a detailed marking scheme for the criteria/ sub criteria, minimum fail-pass qualifying benchmarks are laid down for each criteria/ sub criteria. For such assignment technical evaluation can be carried out by following a simplified procedure for evaluation of technical quality and only a Simplified Technical Proposal (STP, instead of a Full Technical Proposal - FTP) may be called for and indicated in the data sheet of the RfP document. STP should be used. when the assignment is:
 - i) unlikely to have significant downstream impact;
 - ii) of a routine nature where ToR already defines details of tasks to be performed and required output and approach, methodology, organisation, and staffing could be evaluated without use of sub criteria; and
 - iii) that characteristics of work do not require further detailed evaluation of the consultant's experience (e.g. engagement of accountants, auditors, consultant engineers etc).
- f) STP reduces the time and cost required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example, following parameters can be used:

- i) Minimum experience including number of assignments handled by the firm similar to the area of assignment;
- ii) Turnover and other financial parameters of the firm, if required;
- iii) Minimum educational qualifications of each of the key professionals;
- iv) Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.
- v) All the firms which meet the minimum qualifying standards/ criteria so prescribed will stand technically qualified for consideration of their financial bids.

6. Quality Considerations - Section VII: Evaluation/ Scoring Criteria

Section VII – Evaluation/ Scoring Criteria stipulates the scoring scheme for evaluating various Technical criteria. These may cover scoring of criteria relating to the Consultant's experience, Technical Approach and Methodology, understanding of requirements, qualification and experience of Key Experts (Key experts need not be a permanent employee of the consultant), transfer of knowledge etc. It may also lay down a minimum technical score to qualify for the next stage of Financial Evaluation. In a specific evaluation scheme, instead of a scheme of scoring, a scheme may be laid down to evaluate criteria on a pass/fail basis.

11.3.3. Standard Formats for Technical and Financial Proposals

1. Technical Proposal

- a) Form T-1: Proposal Form – (To serve as a covering letter to both the Techno-commercial and Financial Proposals)
 - i) Form T-1A: Consultant's Commercial Information
- b) Form T-2: Consultant's Organisation and Experience
- c) Form T-3: Comments and Suggestions on Terms of Reference, Counterpart Staff, and Inputs to be Provided by the Port
- d) Form T-4: Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference
- e) Form T-5: Work Schedule and Planning for Deliverables
- f) Form T-6: Team Composition, Assignment, and Key Experts' Inputs
 - i) Annex to Form T-6: Key Experts' Curriculum Vitae (CV)
- g) Form T-7: Terms and Conditions - Compliance
- h) Form T-8: Checklist for Consultants.

- i) Form T-9: Bank Guarantee Format for Earnest Money Deposit
- j) Form T-10: Integrity Pact

2. **Financial Proposal:** The financial proposal is to be submitted in a separate BOQ excel file available on the eProcurement Portal.

3. **Other Formats**

- a) Contract Form and its Appendices
 - i) Appendix A: Terms of Reference
 - ii) Appendix B: Key Experts
 - iii) Appendix C: Remuneration Cost Estimates
 - iv) Annex to Appendix C: Breakdown of Agreed Fixed Rates in Consultant's Contract
 - v) Appendix D: Reimbursable Expenses Cost Estimates
 - vi) Appendix E-1: Bank Guarantee Format for Performance Security
 - vii) Appendix E-2: Bank Guarantee Format for Advance Payment
- b) Authorisation to Attend Pre-Proposal Conference. (To be filled up, if required, by Consultant)

11.3.4. Important Provisions of ITC

1. Instructions to Consultants contains all relevant information as well as guidance to the prospective bidders regarding - obtaining tender documents, preparing, and submitting a responsive bid, process of establishing the eligibility/ qualification credentials of the bidders as well as evaluation and comparison of tenders, Code of Integrity in Public Procurement (CIPP), process of grievance redressal, and declaration of results. It also contains introduction/ overview of its contents. Other important provisions in a ITC are:

2. Eligibility to Participate:

- a) As the RFP following the earlier EOI shortlisting process, this invitation is open only to consultants who have been shortlisted therein or are specifically invited to participate.
- b) It is not permissible for the shortlisted consultants to transfer this RFP to any other firm without the permission of the Port.
- c) Proposals from consultants who have not been shortlisted shall not be entertained.
- d) The shortlisted Consultant must continue to meet the eligibility criteria prescribed in the EOI document (based inter-alia on which they were

shortlisted), including restrictions on Consultants from specified countries as of the date of his Proposal submission and should continue to meet these till the award of the contract. Consultants must provide evidence of their continued eligibility to the Port if requested.

3. Association among Shortlisted Consultants:

- a) Unless otherwise stipulated in TIS/ AITC, if a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with either (a) non-shortlisted Consultant(s) or (b) shortlisted Consultants, without vitiating the shortlisting criteria of the REOI.
- b) The shortlisted Consultant shall be a lead member when associating with non-shortlisted firms as a joint venture. If shortlisted Consultants associate with each other, any of them can be a lead member.
- c) A shortlisted Consultant must obtain the Port's written approval not later than 14 days before the RfP submission deadline, in all such cases.
- d) Such approval shall be denied if
 - (i) a shortlisted Consultant proposes to associate with an ineligible Consultant or, in case of an ineligible joint venture, any of its members
 - (ii) because of the change, the consultant no longer substantially meets the qualification criteria outlined in REOI document, or
 - (iii) if, in the opinion of the Port, a substantial reduction in competition may result.

4. **Preferential Procurement Policies:** Preferential Procurement policies applicable to the RfP are mentioned (MSEs, Start-ups, Make in India etc.)
5. **RfP Validity:** RfP shall remain valid for a period not less than 90 (ninety) days from the deadline for the RfP submission.

6. Evaluation/ Scoring Criteria:

- a) Evaluation shall, inter-alia, consider the Consultant's
 - i) "Specific experience of the Consultant (as a firm) relevant to the Assignment";
 - ii) "Adequacy and quality of the proposed methodology, and work plan";
 - iii) "Key Experts' qualifications and competence for the Assignment".

- b) It also specifies, if JV/C are permitted, how credentials of members of JV/C would be considered in evaluation.
- c) Port may, ask all shortlisted Consultants to deliver presentation on their technical proposals. This presentation shall only cover contents of the technical proposals submitted by the Consultant. Unless otherwise provided, no marks shall be assigned to the presentation. Opportunities for such presentations shall be provided in a manner to provide a level playing field to all shortlisted consultants, including time limits for such presentations.

7. **Terms of Reference (ToR):** As mentioned earlier ToR describes the background, purpose/ objectives, description/ scope of work, inputs of Key Experts, deliverables/ outcomes, inputs to be provided by the Port; and timelines of the required 'Service'.

11.3.5. Proposed forms of contract

1. Description of Services and ToR:

- a) The contract includes accepted ToR methodology, general and specific conditions of contract, etc. wherever possible, the Port shall use the Standard Form of Contract.
- b) The general conditions of contract shall include all such conditions which are common in nature and not project specific.
- c) Such conditions include clauses pertaining to sub-contracting, methods of payment, termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc.
- d) The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the Port.

2. Conflict of Interest:

- a) The consultant shall not receive any other remuneration from any source in connection with the same assignment except as provided under the contract.
- b) Consultants assisting a client in privatisation of public assets shall neither purchase nor advise purchasers of such assets.
- c) Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict-of-interest situation as described in the RfP/contract.

3. Non-Disclosure Agreement

The consultant has to sign a Non-disclosure Agreement provided by the Port in the RFP agreeing that during the term of the contract and at all times thereafter and except as specifically permitted by the Port in writing by a duly authorized Officer of the Port, the Consultant firm or their key personnel shall not use, commercialize or disclose to any third party, confidential information of any document furnished by the Port to the consultant for preparing the required reports.

4. Indemnity

"To the fullest extent of the law, Consultant shall indemnify, defend and hold harmless Client, its officers, employees, agents, representatives, consultants, and contractors from and against any and all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities arising out of, resulting from, or in connection with the services contemplated by this Contract". However, the total liability of the Consultant under the Contract is limited to the fees received by the Consultant under the contract.

5. Professional Liability:

Notwithstanding the above indemnity clause,

- a) The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession.
- b) As the consultant's liability to the Port will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability.
- c) If they do so, they should ensure that:
 - i) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct;
 - ii) the consultant's liability to the Port may, in no case, be limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation will depend on each specific case); and
 - iii) any such limitation may deal only with the consultant's liability toward the Port and not with the consultant's liability toward third parties.

6. Staff Substitution of Key Professional:

During an assignment where key professionals are named in the contract, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at least the same level of

qualifications for approval by the Port. The RfP/contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid, and so on.

7. Applicable Law and Settlement of Disputes: The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures.

8. Training or Transfer of Knowledge:

If the assignment includes an important component of training or transfer of knowledge to the Port staff, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training programme shall be explicitly stated in the consultant's contract and in the budget for the assignment. (Rule 186 of GFR 2017)

11.4. Uploading of Tender Documents: Mandatory e-Publishing

11.4.1. ePublishing of Tender Documents

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

11.4.2. Amendment of Tender Documents

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

amendments, and prepare a revised tender, the time and date of submission of tenders are also to be suitably extended (not less than 3 days)

11.4.3. Extension of Deadline of Bid Submission

1. To give sufficient time to bidders to prepare and submit their bids, the Port may suo-moto or based on justifiable request of bidder(s) or due to significant modification of tender documents extend the time and date of submission of tenders suitably (not less than three (3) days), along with suitable changes in the corresponding time-frames for receipt of tender, bid validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.
2. The e-Procurement portal/ GeM should not provide the bid count before the tender opening time to anybody including the Port, even on their request. The eProcurement portal/ GeM may permit Port to input minimum number of bids considered sufficient and prespecified number of days for automatic extension of bid opening (not less than 10 days) at the time of tender upload. The system shall declare in the tender details that in case of low competition (without specifying the number), the tender closing time shall be automatically extended by specified number of days. If bids received till the bid opening time are less than the specified minimum bids the system should automatically extend the tender opening by specified number of days without seeking any input from or sharing any information with anyone including the Port. Purchaser and bidders shall only be informed that due to less competition, the tender closing time has been extended up to (date and time). If a Port wants to go ahead even with low competition (e.g., due to urgency), they may mention 'one' as minimum bid. So that if no bid is received tender is automatically extended otherwise not. GeM and eProcurement portals shall update their systems accordingly.

11.5. Obtaining Tender Documents and Submitting Bids

11.5.1. Availability and Cost of Tender Documents

- a) Tender documents should preferably be sold or available for download after the date and time of the start of availability till the deadline for availability (Rule 161 (v) of GFR 2017) as mentioned in tender document (say up to the last date of submission of tenders) and this should be clearly indicated in the documents.
- b) The Port should also post the complete tender document on the website and permit prospective bidders to make use of the document downloaded from the website.

- c) Normally no tenders document fee should be charged. In exceptional cases Port may fix a bare minimum cost of tender documents to defray the expenses/ effort of preparing documents, drawings etc.
- d) The cost of the tender document is to be submitted to the authority nominated therein by the prospective bidder in the form of a demand draft /banker's cheque/ pay order/ online payment gateway.
- e) Firms that are eligible for exemption from the tender document cost such as MSEs, Port's registered units (for relevant items and monetary limit) have to submit/ upload scanned copy of documents in support of this exemption.

11.5.2. Participation of Bidders

1. Eligibility Criteria

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

2. Purchase Preference Policies

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

3. Conflict of Interest among Bidders/ Agents

All bidders shall have to abide by the Code of Integrity in Public Procurement detailed in the Tender Document. A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Port's interests. All bidders found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this tender process, if:

- a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or

- b) receives or have received any direct or indirect subsidy/ financial stake from another bidder; or
- c) has the same legal representative/ agent as another bidder for purposes of this bid.
- d) A Principal can authorize only one agent, and an agent also should not represent or quote on behalf of more than one Principal. However, this shall not debar more than one Authorised distributor from quoting equipment manufactured by an Original Equipment Manufacturer (OEM), in procurements under Proprietary Article Certificate; or
- e) has a relationship with another bidder, directly or through common third parties, which puts it in a position to have access to information about or influence the bid of another Bidder or influence the decisions of the Port regarding this Tender process; or
- f) participates in more than one bid in this tender process. Participation in any capacity by a Bidder (including the participation of a Bidder as sub-contractor in another bid or vice-versa) in more than one bid shall result in the disqualification of his bid as the main/ principal/ lead bidder. However, this does not limit the participation of a non-bidder firm as a sub-contractor in more than one bid; or
- g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services that it provided (or were provided by any allied firm that directly or indirectly controls, is controlled by, or is under common control with that firm), for the procurement planning (inter-alia preparation of feasibility/ cost estimates/ Detailed Project Report (DPR), design/ technical specifications, terms of reference (ToR)/ Activity Schedule/ schedule of requirements or the Tender Document etc) of this Tender process; or
- h) has a close business or family relationship with a staff of the Procuring Organisation who: (i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Tender Process, and/or the evaluation of bids; or (ii) would be involved in the implementation or supervision of resulting Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Port throughout the Tender process and execution of the Contract.
- i) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related allied firms. Bidders must proactively declare

such allied/ common business/ management units in same/ similar line of business.

11.5.3. Pre-proposal Meeting (Pre-bid Conference) and Pre-NIT Conference

1. **Pre-Notice Inviting Tender (NIT) Conference:** In complex and innovative procurement cases or where the Port may not have the required knowledge to formulate tender provisions, a pre-NIT conference (Rule 173 (x) of GFR 2017) may help the Port in obtaining inputs from the Consultancy firms. Such conferences should be widely publicised so that different potential consultancy firms can attend (Notified under para 9.2 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021).
2. **Pre-proposal Meeting:** In all cases of large value or complex assignments, one or more pre-proposal meetings may be prescribed in the EoI/ RfP. The date and time for such a meeting should normally be after 15 to 30 (fifteen to thirty) days of issue of the EoI/ RfP and should be specified in the EoI/ RfP itself. During this meeting, the technical/ commercial details, scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the EoI/ RfP as a result of the pre-bid meeting or otherwise considered necessary by the Port, a formal corrigendum may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 (fifteen) days) is available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.
 - 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 by which the written queries for the Pre-bid must reach the authority and the last date for registration for participation in the Pre-bid conference are also mentioned in the tender Document (7 days before the date of the conference, if not specified). The pre-bid conference may also be held online at the discretion of the Port.

- c) Delegates participating in the Pre-bid conference must provide a photo identity and an authorization letter as per the specified format from their Company/ principals; else, they shall not be allowed to participate.
- d) After the Pre-bid conference, replies to Queries shall be published on the Port's portal within seven days from the conference. Where some significant changes are made in the terms/scope of the EoI/ RfP as a result of the pre-bid meeting or otherwise considered necessary by the Port, a formal corrigendum may be issued, to all bidders, which shall form part of the Tender Document. To give reasonable time to the prospective bidders to take such clarifications into account in preparing their bids, the Port may suitably extend, as necessary, the deadline for the bid submission.

11.5.4. Clarification of Tender Documents

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

11.5.5. Withdraw/ Amendments / Modifications to Bids by Bidders

- a) The bidder, after submitting its bid is permitted to substitute/ alter/modify it, superseding earlier bid, so long such revised bid is uploaded/ received duly sealed and marked like original bid, up to the deadline of submission of bids.
- b) Resubmission of a bid shall require uploading of all documents, including financial bid afresh.
- c) The system shall consider only the last bid submitted as the valid bid.
- d) The bidder may withdraw his bid before the bid submission deadline, and it shall be marked as withdrawn and shall not get opened during the Bid opening.
- e) Any such action after that deadline is not permitted.
- f) Withdrawal/ amendment/ modification/ alteration/ impairment/ derogation of a bid, in any respect, by its bidders between the deadline for submission of

bids and expiration of the period of bid validity, his bid security/ EMD shall be forfeited besides imposition of any other punitive remedy available to the Port.

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

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

11.5.7. Uploading/ Submission of Bids

1. Uploading Bids in eProcurement

- 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 in the Portal.
- b) Any query/ clarification/ complaint regarding downloading Tender Documents and uploading Bids on the e-Procurement portal may be addressed to the Help Desk of the portal.
- c) In case of conflict between provisions of the Portal with the Tender Document, provisions of the Portal shall prevail. Bidders may study the resources provided by the Portal for Bidders.
- d) Bids must be uploaded till the deadline for submission mentioned in the Tender Document. If the office happens to be closed on the deadline to submit the bids as specified above, this deadline shall not be extended. Bidder must comply with the conditions of the eProcurement portal,

including registration, compatible Digital Signature Certificate (DSC) etc. In the case of downloaded documents, Bidder must not make any changes to the contents of the documents while uploading, except for filling in the required information.

- e) Only one copy of the bid can be uploaded, and Bidder shall digitally sign all statements, documents, certificates uploaded by him, owning sole and complete responsibility for their correctness/ authenticity as per the provisions of the IT Act 2000 as amended from time to time.
- f) Regarding the protected Price Schedule (excel format, Cover-2), Bidder shall write his name in the space provided in the specified location only. Bidder shall type rates in the figure only in the rate column of respective item(s) without any blank cell or Zero values in the rate column, without any alteration/ deletion/ modification of other portions of the excel sheet. If space is inadequate, Bidder may upload additional documents under "Additional Documents" in the "bid Cover Content."
- g) The date and time of the e-Procurement server clock, which is also displayed on the dashboard of the bidders, shall be taken as the reference time for deciding the closing time of bid submission. Bidders are advised to ensure they submit their bid within the deadline and time of bid submission, taking the server clock as a reference, failing which the portal shall not accept the Bids. No request on the account that the server clock was not showing the correct time and that a particular bidder could not submit their bid because of this shall be entertained. Failure or defects on the internet or heavy traffic at the server shall not be accepted as a reason for a complaint. The Port shall not be responsible for any failure, malfunction or breakdown of the electronic system used during the e-Tender Process.
- h) All Bids uploaded by Bidder to the portal shall get automatically encrypted. The encrypted bid can only be decrypted/ opened by the authorised persons on or after the due date and time. The bidder should ensure the correctness of the bid before uploading and take a printout of the system generated submission summary to confirm successful bid upload.
- i) Bidder must upload scanned copies of originals (or self-attested copies of originals – as specified). Bidder should ensure the clarity/ legibility of the scanned documents uploaded by him. The Port reserves its right to call for verification originals of all such self-certified documents from the Bidders at any stage of evaluation, especially from the successful Bidder(s) before the issue of Letter of Award (LoA). Unless otherwise specified, originals (or self-attested copies of originals – as specified therein) of specified scanned uploaded documents must be physically submitted sealed in double cover

and acknowledgement be obtained before the bid submission deadline at mentioned venue. Failure to do so is likely to result in the bid being rejected. If the office is closed on the deadline for physical submission of originals, it shall stand extended to the next working day at the same time and venue.

- j) No manual Bids shall be made available or accepted for submission in e-Procurement (except for originals of scanned copies as per sub-para above).

2. Submission of Bids in offline Tender Process:

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

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

3. Bid security:

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

11.5.8. Bid Validity

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

11.6. Opening of Bids

1. Immediately after the deadline for bid submission, Port shall proceed to the bid opening. If the specified date of Bid Opening falls on is subsequently declared a holiday or closed day for the Port, the Bids shall be opened at the appointed time on the next working day. In offline tenders, the BOC shall comprise one officer each from the Port and Associated/ integrated Finance.
2. In e-procurement, all tenders uploaded by bidders are received, safeguarded, and opened online on the portal.
3. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:
 - a) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE/ SLTE are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the tender document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 4;
 - b) At a prescheduled date and time, the Tender Opening Committee (TOC) of the day should get the tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with.
 - i) All bids should be collected from the tender box.
 - ii) Bids for tenders not opening on that day should be put back into the box and the box resealed.
 - iii) Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Evaluation Committee (TEC) concerned if the date of opening is over.
 - iv) The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted,

and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids.

- v) TOC should ensure and demonstrate that bid envelopes are duly sealed and untampered.
- vi) Late bids should be separately counted but kept aside and not opened.
- vii) In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered (Rule 165, 188 of GFR 2017);
- c) The technical bids will be opened on the pre-announced date and the financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically.
- d) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the TOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the TOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the TOC;
- e) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the TOC should write them in words. All rebates/discounts should be similarly circled, numbered, and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- f) The TOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other distinctive feature of the tender for the information of the representatives attending the tender opening. No clarifications by bidders should be entertained or allowed to be recorded during the bid opening. TOC has no authority to reject any tender at the tender opening stage;

- g) Financial instruments should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
- h) A bid opening report containing the names of the bidders (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.

11.7. Transparency and Protecting Third-Party Rights of Bidders

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

11.8. Bidding Invitation Process- Risks and Mitigations

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

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

Risk-3

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

Mitigation-3

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

Risk-4

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

Mitigation-4

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

Risk-5

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

Mitigation-5

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

Chapter-12

Forms of Securities

12.1. Forms of Security

12.1.1. Bid Security

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

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

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

12.1.2. Performance Security

1. To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract (Rule 171 of GFR 2017). Performance security should be for an amount of three (3) to five (5) per cent of the value of the contract, as specified in the tender documents.
 - a) Port may stipulate an upper ceiling for the Performance Security. For an illustrative example, the ceiling can be Rs 75 Lakhs for tenders up to Rs 50 Crores and Rs 3 Crore for tenders above Rs 50 Cr but below Rs 300 Cr. For tenders of higher value than this, the Port may decide-the amount of Performance Security (but not less than Rs 3 Cr mentioned above).
 - b) Port may decide their own upper limits for performance security, with Finance Concurrence and approval of the Competent authority, based on their perception of performance risks vis-a vis need for competition

- c) Performance security may be furnished in the form of Insurance Surety Bond (Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022), account payee demand draft, from a commercial bank, bank guarantee (including e-bank guarantee (Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022) issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects.
- d) In the case of GTE tenders, the performance security should be in the same currency as the contract and must conform to the Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities
- e) Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable.

2. The right quantum of performance security has to strike a balance between protecting the Port's interest in case of default in performance vs. avoiding increase in tendered price and /or reduced competition. If the security is low, the Port may be adversely affected if and when default occurs. If it is high, the extra financial cost of furnishing such security will be factored in by bidders when quoting prices & hence the cost may increase.
3. Sufficient flexibility is already available in the GFRs to design the performance security for procurement of services, both value and duration, duly considering the market conditions and commercial practice for the particular kind of service.
4. Submission of Performance Security is not necessary for a contract value up to Rs. 1 (one) 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 Consultancy Services contracts which are exempted from providing Performance Security.
5. Port may exempt CPSEs or Government Organisations (on their specific requests or otherwise) from submission of Performance Security:
6. Performance Security is to be furnished by a specified date (generally 14 (fourteen) to 28 (twenty-eight) days after notification of the award, depending on the amount) and it should remain valid for a period of 60 (sixty, or any other period mentioned in the tender Documents) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
7. The performance security will be forfeited and credited to the Port's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in

all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal/ website of the Port, to make the process transparent and visible.

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

12.1.3 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.

12.1.4 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 procuring entities.

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.

12.2. Verification of Bank Guarantees

1. Bank guarantees submitted by the bidders/suppliers as EMD/performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/ finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/advance payments and for various other purposes are as follows:
 - a) BG shall be as per the prescribed formats.
 - b) The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
 - c) The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
 - d) The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of Port on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;
 - e) Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the Port.
2. Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the Organisations should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.
3. Corporate Guarantee or Indemnity Bond shall not be accepted for Bid Security (EMD) or performance Security, or in lieu of any other Bank Guarantee (e.g., for advance payment/ warranty obligations).

12.3. Safe Custody and Monitoring of Instruments

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

- a) The Port shall also make institutional arrangements for taking all necessary actions on time for extension or forfeiture/ encashment or refund of EMDs and performance securities, as the case may be.
- b) Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts.
- c) Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period.
- d) Bank Guarantee should never be handed over to the supplier/Consultancy firm for the purpose of extension of validity.
- e) A system of monitoring of securities and other instruments may be computerised with automatic alerts about lapse of validity etc.

Chapter-13

Prices, Payment Terms and Price Variations

13.1. Payment Clause

1. The elements of price included in the quotation of a bidder depend on the nature of the services to be performed and the nature of goods to be supplied, location of the supplier/consultant, location of the Port, terms of delivery/completion, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.
2. In case of indigenous goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable. In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training, and so on.
3. It is, therefore, necessary that, to enable the bidders to frame their quotations properly in a meaningful manner, the tender documents should clearly specify the desired terms of delivery/completion and also the duties and responsibilities to be performed by the supplier/consultant in addition to supply of goods/services.
4. **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up.
5. **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic bidders are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.

6. Payment to Suppliers/Consultants:

In every contract, timely completion of the contract is the essence for the port and receiving timely payment is the essence for the consultant. 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. Hence as far as possible, the payment terms and time schedule should be given in the contract and must be adhered to.

13.2. Terms of Payment

1. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in RfP and also in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts) or on a schedule agreed based on certain milestones or outputs.
2. **Modes of Payment:** Payments are usually made by electronic payment systems like Electronic Clearance System (ECS), Real-time gross settlement systems (RTGS) National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways.

13.3. Advance Payment

13.3.1. Conditions for Advance Payments

1. Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases. Advance payment for mobilisation in Consultancy Contracts should be normally discouraged.
 - a) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
 - b) Advance payment demanded by firms against fabrication contracts, turn-key contracts; or supply of complicated bespoke goods and so on;
2. Such advance payments should not exceed the following limits
 - a) Thirty per cent of the contract value to private firms;
 - b) Forty per cent of the contract value to a state or central Government agency or PSU; or
 - c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.

- d) In exceptional cases, the Port may relax the ceilings mentioned above with prior concurrence of the Finance and approval of the Competent Authority.
- 3. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case-to-case basis. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, etc. should be obtained from the firm. Indemnity Bond is not to be considered in place of Bank Guarantee.

13.3.2. Documents for Advance Payments

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

13.3.3. Insurance

- a) In every case where advance payment or payment against dispatch documents is to be made or LC is to be opened against the supply of goods as part of the consultancy contract, the condition of insurance should invariably be incorporated in the terms and conditions.
- b) 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.
- c) If considered necessary, insurance may cover "all risks" including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the Port for receiving the goods at the destination.
- d) Where delivery of imported goods is required by the Port on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the Port, the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the Port. (Rule 172 of GFR 2017)

13.4. Firm Price, and Variable Price

- 1. **Fixed price:** Short-term contracts where the delivery period does not extend beyond 12 (twelve) months should normally be concluded on a firm and fixed price (and not subject to variation on any account) by inviting tenders accordingly.
- 2. **Variable Price:**
 - a) In case the duration of the contract is expected to exceed 12 (twelve) months for a time-based contract or an Indefinite delivery contract, a price

adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country, to protect the Port's interests.

Lump-sum contracts shall not generally be subject to price adjustment except for multi-year contracts (for example, for auditors).

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

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

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

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

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

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

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

- ii) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower

than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);

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

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

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

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

- x) The Port should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- xi) An illustrative PVC clause is available in Annexure 12.

13.5. Statutory Taxes/ Duties/ Levies

13.5.1. Goods and Services Tax (GST)

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

- g) Bidders must also consider the benefits of input tax credit under the GST legislations, as amended from time to time, on Input goods/Capital goods / Input Services while quoting the prices.
- h) In their bids, the bidders shall indicate the details of their GST Jurisdictional Assessing Officers (Designation, address, email ID). In case of a contract award, the Purchaser shall immediately forward a copy of the LOA/Purchase Order to the Jurisdictional Assessing Officer mentioned in the bidder's bid.
- i) The Port's state-wise GSTINs shall be indicated in Tender Documents.

2. HSN Code and GST Rate:

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

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

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

- a) Personal and Corporate Tax: Bidder shall bear all Personal/ Corporate taxes imposed on owners/ company/ Joint Venture/Subcontractors or their employees.
- b) Taxes on Sub-Contractors, Vendors: Bidder shall bear all taxes, including GST, as may be imposed on Contractor or supply-chain (sub-Contractors, Vendors, etc.).

c) Duties/ Taxes on Raw Materials: The Port is not liable for any claim from the contractor on account of fresh imposition and/ or increase (including statutory increase) of GST, customs duty, or other duties on raw materials and/ or components used directly in the manufacture of the contracted Goods taking place during the pendency of the contract unless such liability is expressly agreed to in terms of the contract.

13.5.2. Deduction of Income Tax from Payments

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

13.5.3. Statutory Variation Clause:

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

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

13.6. e-Payment

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

13.7. Recovery of Public Money from Supplier's Bill

Sometimes, requests are received from a different Ports/ministry/Department for withholding some payment of a supplier out of the payment or Securities due to it against a contract. Such requests are to be examined by the Port (which has received the request) on the merits of the case for further action. It will, however, be the

responsibility of the Port/ministry/Department asking for withholding of payment to defend the Port against any legal procedure arising out of such withholding as also for payment of any interest thereof.

13.8. Refund from Supplier

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

Chapter-14

Shortlisting of Consultants, Expression of Interest (EoI)

14.1. Basic Considerations

1. Due to inherent complexities of evaluation of physically non-measurable scope and quality standards of consultancy proposals, it is too time consuming and expensive for the Port to invite (as well for the Consultancy firms to prepare) and evaluate proposals from all consultants who want to compete. Therefore, in Procurement of Consultancy, it is done in a two-stage process.
2. In the first stage of procurement, the qualified firms with requisite experience, technical and financial capabilities, who can be trusted to deliver the required services at the desired level of quality, are shortlisted transparently. This shortlisting is done through Expression of Interest (EoI) process. Care should be taken to avoid stipulation of shortlisting qualification criteria disproportionate to the requirement of the services that may lead to restricted shortlist and lack of competition in the second stage. Adequate time should be allowed for getting responses from interested consultants. The Port shall make available copies of the EoI document to the interested consultants in hard copies as well as on its website.
3. In the second stage Request for Proposals (RfP), proposals containing Technical and Financial Bids is invited from such shortlisted bidders. Selection of winning bidder is based on the quality of the proposal and, where appropriate, on the cost of services to be provided.

14.2. Modes of EoI

1. **Open Tender Enquiry (OTE)**
 - a) For procurement above Rs 50 (Rupees Fifty) Lakhs shortlisting is done in an openly advertised competitive (OTE mode) (Rule 183 (ii) of GFR 2017) shortlisting process called Expression of Interest (EoI), giving equal opportunity to all interested bidders to be considered for shortlisting.
 - b) Under EoI the "Request for Expression of Interest" (REoI) is advertised on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on Government E-Market (GeM). Port should also publish all its advertised tender enquiries on its website.
 - c) The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

- d) A complete ToR should be ready before requesting EoI.
- e) Attention of known reputed consultants may also be separately drawn wherever possible.
- f) The advertisement must include, among other things, the last date of submission of EoI, how to get/ download copy of the EoI document including ToR, contact information of the Port with the name of contact person, and so on.

2. Global Tender Enquiry (GTE)

In case it is felt that likely consultants may not be available in India, the EoI process may be done on Global Tender Enquiry (GTE) process, by sending REoI notice to foreign embassies in India and Indian embassies in relevant countries. Please see further details of GTE and also restriction on GTE for tenders below Rs. 200 Crore.

3. Limited Tender Enquiry (LTE)

- a) In procurements of consultancy services below Rs 50 (Rupees fifty) Lakhs, shortlisting is done without a formal published Expression of Interest (EoI), akin to a Limited Tender Enquiry (LTE) process (Rule 183 (i) of GFR 2017).
- b) To start with, the preparation of a long list of potential consultants/ service providers may be done on the basis of formal or informal enquiries from other Ports or Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.
- c) The Port should scrutinise the preliminary long list of likely contractors as identified above and shortlist the *prima facie* eligible and capable contractors from the long list.
- d) The number of consultants in this moderated long-list should not be less than three. In case sufficient consultants cannot be located, then the responses may be called from lesser number of consultants, but not less than three in any case, after taking Competent Authority's approval.
- e) To smoothen this shortlisting of consultants for projects below Rs 50 (Rupees Fifty) Lakhs, Ports who do frequent procurement of consultancy services, may consider preparation of a Panel of qualified consultants, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods.
- f) If the complexity of the project so justifies, a formal EoI may be advertised as in above, even for procurements below Rs 50 (Rupees Fifty) Lakhs, with the approval of Competent Authority.

4. Special Limited Tender (SLTE)

LTE mode for EoI, even for values higher than Rs. 50 lakh (Rupees Fifty Lakh) (Rule 162 of GFR 2017), where normally OTE should have been done, is permissible in certain exceptional circumstances as follows. Powers to sanction procurement on 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 VfM obtained may be less than in case of OTE; hence it should be restricted to following situations.:

- a) 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.
- b) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- c) Government policy designates procurement from specific agencies i.e. empaneled consultants/transaction advisers.

14.3. Evaluation of REoI

14.3.1. General Norms of Evaluation

For role of the evaluation committee, general norms of evaluation, preliminary examination of bids, evaluation of qualifications, which shall apply mutatis mutandis. For sake of brevity these are not repeated here.

14.3.2. Evaluation of Responsiveness and Eligibility

1. Only substantively responsive EOIs shall be evaluated for shortlisting. A substantively responsive EOI is complete and conforms to the REOI document's essential terms and conditions.
2. The Port shall determine, to its satisfaction, whether the Consultants are eligible as per laid down eligibility criteria to participate in the REOI process. The eligibility evaluation shall be on a "pass" or "fail" basis. A Consultant must achieve a "pass" on all the criteria to proceed to the next step. Any Consultant not achieving a 'pass' in any of the eligibility criteria shall be rejected as nonresponsive.

14.3.3. Evaluation of Qualification

1. Port shall determine whether the Consultants are qualified and capable in all respects to be shortlisted to provide the 'Services' (subject to dispensation, if any,

for Startups. The Port shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handling general and similar consultancy assignments, and financial capability of the firm.

2. The determination shall not consider the qualifications of other firms, such as the consultant's subsidiaries, parent entities, affiliates, or any other entity different from the consultant. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant or that of the Consultant's partners or sub-consultants.
3. The Port reserves the right to waive minor deviations in the qualification criteria if they do not materially affect the capability of a Consultant to perform the contract.
4. The qualification and Experience of Key Experts are not included in the shortlisting criteria but shall be evaluated at the RFP stage. Since the bidders who the REoI qualification, can well manage to attract right Key experts during RfP.
5. In case a particular certification/ licence is required to perform the assignment, that may also be included in eligibility or qualification criteria.
6. Each criterion may be sub-divided into sub-criteria, if called for. Table, below gives an indicative criterion. The criteria and their weightage may be changed as per the need of Port.

Table : Qualification criteria and their weightages

Criteria/ Sub-criteria	Suggested Values	Sub-criteria	Criteria
Criteria 1 General and Similar Experience: Bidders providing Consultancy services for at least the specified period and have completed the specified volume of general and similar consultancy assignments during the specified period.			70%
Similar assignments	Define based on value, general and specific sector of work, region, Key activities/ methodologies/ technologies etc.		
Consultants must have at least α years' experience in Consultancy Services	$\alpha = 7$	20%	

During the last α years, Consultancy Assignments completed or substantially completed (at least γ payments received) should be at least β	$\alpha = 7$ $\gamma = 80\%$ $\beta = 7$	50%	
Out of the Consultancy Assignments mentioned above, δ should be similar assignments	$\delta = 2$	30%	
Criteria 2 - Financial Capability: Overall financial strength of the consultant in terms of turnover, profitability, and cash flow (liquid assets) situation			30%
Turnover: Minimum average annual turnover of at least Rs. θ Crores, at least κ of which should be from Consultancy Service Contracts, (total payments received for contracts in progress or completed) within the last α years	$\theta = 200\%$ of the value of assignment $\kappa = 50\%$ $\alpha = 7$	70%	
Financial Viability - Net Worth: The Net Worth of Bidder firm should not be negative on 'The Relevant Date' and should not have eroded by more than ξ in the last 3 years.	$\xi = 30\%$	30%	
Relaxation for Start-ups: Qualification criteria can be relaxed upto λ % for startups subject to meeting the quality and technical specifications during the RFP.	$\lambda = [20\% \text{ (twenty percent)}]$		
<p>Note: During RFP Process Consultant shall be asked to furnish documentary evidence to demonstrate his compliance to Criteria 1 and Criteria 2.</p> <p>Relevant Date when the specified period ends for different criteria shall be:</p> <ol style="list-style-type: none"> 1) For all annual reports, periods mentioned are ending with the financial year of the company [say 2023-24]. 2) For other statements, latest statement available on the last date of bid submission. 			

7. It is also noted that while shortlisting/ selecting consultants, some procuring entities are keeping the minimum qualifying turnover at the level of 5-10 times of the estimated cost of the consultancy work. This, *prima facie*, appears high.
 - a) Higher qualification criteria increase the likelihood of adequate experience/ capacity but reduce the competition; if set unduly high they may increase the cost without any improvement in quality.
 - b) It is suggested that the criteria should be fixed on a reasonable basis while drafting tender documents and such higher minimum qualifying turnover should be kept only, if adequately justified (Notified vide OM No.F.18/13/2020-PPD issued by Department of Expenditure dated 13.07.2020).

- c) In higher value procurements, the minimum annual turnover should not be blindly a multiplier of the assignment value, but there may be an upper cap on demanded turnover, so as not to restrict competition only to the big four or five Consultancy Firms.
- 8. In EoI, simplified evaluation criteria should be used, instead of marking schemes. A fail-pass, minimum benchmark in each criteria/ sub-criteria can be specified e.g. must have past experience of at least two similar projects; firm must have a turnover of at least Rs 10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.
- 9. However, in complex situation, marks/ scores may be assigned to the response of each consultant based on weightages assigned to each of the criteria in the EoI. For example, in case of number of assignments in last 7 years, out of maximum 35 marks for the sub-criteria, scoring can be
 - a) 3 marks per assignment upto 7 assignments (benchmark); and
 - b) 3.5 marks for additional assignments, subject to maximum of 35.
- 10. This exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.
- 11. The Port shall short list all the consultants who secure the minimum required marks [normally 75% (seventy five percent)]. The minimum qualifying requirement shall be specified in the EoI document.

14.3.4. The EoI Evaluation Report

- 1. The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three (Rule 184 of GFR 2017) and generally not more than eight (to avoid inordinate delays in evaluation of subsequent RfP).
- 2. If there are a larger number of consultants meeting the evaluation criteria, the shortlist shall be restricted to a specified number of Consultants (if not specified, eight (8) consultants) based on higher Average Turnover (or any other criteria, if so, stipulated therein).
- 3. The short list may comprise only national consultants (firms registered or incorporated in the country and having registered office in India), for small assignments and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training

or outreach to be carried out in local language) or if foreign consultants have not expressed any interest.

4. If the same firm is considered for concurrent assignments (for example, a construction supervision consultant for different stretches/ packages of rehabilitation/ reconstruction of a road contract), the Port shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However, this needs to be pre-declared in the EoI documents.
5. The evaluation committee may submit its EoI Evaluation report to Competent Authority for approval. Tender Evaluation Committee format at Annexure 5 can be mutatis-mutandis used for this purpose. RfP documents would be issued only to the shortlisted consultants.

14.3.5. Declaration of Shortlist and issue of RfP:

1. EOIs of Consultants that succeed in the above evaluation shall be shortlisted. Provisionally shortlisted consultants will be informed of the condition(s) that must be met before submitting their Proposal in the RFP process.
2. Only shortlisted (including provisionally shortlisted) Consultants shall be invited to participate in the following RFP process. Such shortlisting shall remain valid for a period specified in the REoI (six months from the date of declaration, if not so specified). It's important that the RfP is issued as early as possible after shortlisting, since the qualification data on which shortlisting based, may tend to become outdated. In case such delay is more than 6 months, it would be better to reinvite EoI.
3. After the EoI Evaluation report is accepted by the competent authority, the name and address of the shortlisted consultant (s) shall be published in the portal and notice board/ bulletin/website of the Port. All Consultants shall be advised about shortlisting of their EOIs or otherwise without disclosing the comparative position of their EOIs with that of others. Shortlisted Consultants must not advertise or publish the same in any form without the prior written consent of the Port.
4. Shortlisting a consultant is an administrative process and does not confer any legal or contractual rights on the shortlisted bidder. Since original documents/ certificates are not being called for and examined at this stage, all shortlisted shall be conditional upon final verification of such documents/ certificates during the RFP Process.

14.4. Shortlisting – Risks and Mitigation

Risk-1

Conflict of interest situations: It is possible that conflict of interest situations are not reported or declared by the participating consultants (or sometimes by members of the evaluation committee).

Mitigation-1

These situations need to be dealt with by signing declarations in specified formats both at the EoI bid stage as also in the technical proposal (and by TEC members before undertaking the evaluation of proposals).

Risk-2

Qualifications leasing: Local Bidders with insufficient qualifications may show association with well qualified (foreign or local) consultants, just to use their qualification documents to get the contract. These well-qualified consultants lease their qualification – but do not or only minimally contribute experience or key personnel at the execution stage.

Mitigation-2

This issue needs to be dealt with from the EoI stage by very clearly identifying the qualified applicant and putting on record/ contract the guaranteed contribution from the partner with qualification.

Chapter-15

RfP Evaluation Process

15.1. Role of Tender Evaluation Committee (TEC)

15.1.1. Composition of TEC:

1. TEC should normally comprise of three members including a finance member (nominated by the Financial Advisor/GMF) and a representative of the user as per SoPP to carry out evaluation of the tenders. TEC 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 evaluation of the bids. There is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc.

As per Rule 173 (xxii) of GFR 2017 no member of the tender committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 50 lakhs.

Though the GFR stipulates this provision only when the estimated value of procurement exceeds Rs 50 lakh, it is desirable that the same provision should be followed in the constitution of all evaluation committees irrespective of the value of procurement.

2. For all cases having financial implications of more than Rs. 50 (Rupees Fifty) lakhs, a Tender Evaluation Committee (TEC), comprising of normally three members including Financial Adviser/GMF or his representative and a representative of the user, shall be constituted as per SoPP, in order to carry out the consultant selection procedure.

However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids.

The TEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations, and final selection of the consultant.

Even in case of selection of a consultant by direct negotiations having financial implications more than Rs 25 (Rupees Twenty-five) Lakhs, the TEC shall negotiate with the consultant on technical and financial aspects. (separate committees may be constituted for separate assignments).

3. The representative of the Proponent Department will work as a convenor of the TEC. He shall distribute the RfP to the TEC members and request them to familiarize themselves with the characteristics and requirements of the assignment, the selection procedures, and the evaluation criteria and sub-criteria. The convener of the TEC should also call meeting of the TEC members to review any questions they may have on the evaluation principles, procedures, and objectives etc.

15.1.2. No Conflict of Interest at all Stages of Evaluation of Bids

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

1. TEC members should ensure that they
 - a) have no conflict of interest;
 - b) understand the rating and scoring system;
 - c) have been provided with evaluation worksheets; and
 - d) Agree on how to evaluate the proposals.
2. Members of the TEC should not directly engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.
3. TEC duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but they would still be answerable for such decisions. TEC members cannot co-opt or nominate others to attend deliberations on their behalf. TEC deliberations are best held across the table and not through circulation of notes.
4. Information relating to evaluation of tenders and the Tender Evaluation Committee’s (TEC’s) deliberations should be confidential and not be shared with persons not officially connected with the process, until the award of contract is notified to the successful firm, except that after technical evaluation, the overall technical score shall be informed to all consultants for each criterion or sub-criterion, if any, as required in the Tender document. Under no circumstances, Tender file or confidential information contained therein shall be provided for scrutiny or for decision to any person/ office who are not involved in decision making.
5. All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TEC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information

processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender." TEC members may also make such a declaration at the end of their reports.

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

15.1.3. Handling Dissent among Tender Committee

- All members of the TEC should resolve their differences through personal discussions instead of making to and fro references in writing.

In cases where it is not possible to come to a consensus and differences persist amongst TEC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note.

The final recommendations should be that of the majority view. However, such situations should be rare.

The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

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

However, if the TEC, after considering the views of the Competent Authority, sticks to its own earlier recommendations, the Competent Authority can finally decide as deemed fit, duly recording detailed reasons.

He will be responsible for such decisions. However, such situations should be rare.

15.1.4. Recommendations/ Report

- The TEC must make formal recommendations (Annexure 5) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is

determined to be qualified to perform the contract satisfactorily and his credentials have been verified.

- a) It is a good practice that TEC should spell out salient terms and conditions of the offer(s) recommended for acceptance.
- b) It should also be ensured by the TEC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TEC; otherwise, there may be delay in acceptance of the contract by the supplier.
- c) These recommendations are submitted for approval to the tender accepting authority.
- d) In any purchase decision, the responsibility of the Competent Authority is not discharged merely by selecting the cheapest offer or accepting TEC recommendations, but ensuring whether:
 - i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
 - ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
 - iii) The price of the offer is reasonable and consistent with the quality required; and
- f) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

2. After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued. (Rule 189 of GFR 2017)

15.2. Basic Considerations

15.2.1. Importance of Evaluation of Bids

1. The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly based on the terms and conditions incorporated in the tender document and those stipulated by the bidders in their tenders.
 - a) The Port may include in the evaluation criteria in the Tender Document, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost- effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc.
 - b) No criteria shall be used for evaluation of tenders that cannot be verified.

- c) No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders.
- d) Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection.
- e) Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders.
- f) The aim should be to ensure that no bidder gets undue advantage at the cost of other bidders and/or at the cost of Port.

The process of tender evaluation is described in the subsequent paras in this chapter.

15.2.2. Schedule of Procurement Powers (SoPP):

1. Port should lay down a Schedule of Procurement Powers (SoPP) detail such thresholds. It can also lay down the powers, jurisdiction, and composition of various levels of Tender Evaluation Committee and corresponding Competent Authority for various categories of procurement and different threshold values of procurements. A suggested format for SoPP is at Annexure-1, however exact values of threshold may have to be decided by Port themselves.
2. 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 by individual competent authority, without involvement of a TEC or any evaluation report. He would himself carry out all the steps in evaluation described below, instead of the TEC and directly records reasons and decision on the file itself. He may ask for a Technical Suitability report from user departments, if so needed.
3. In procurements above such a threshold, evaluation is to be done by Tender Evaluation Committee consisting of three or more officers, however no member of the Committee should be reporting directly to any other member of such Committee.
4. Member from the proponent department of the Tender Committee (or competent authority, in direct acceptance cases) shall receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement.
5. Competent Authority (authority competent to approve the procurement of that value as per the SoPP)'s written approval must be taken at various stages of procurement, before proceeding ahead e.g.:
 - a) Administrative/ financial sanctions/ Issue of tender

- b) Approval of Techno commercial evaluation and Opening of price bids in case of two packet system
- c) Price Negotiations if permitted under specified circumstances.
- d) Approval of Financial Evaluation and Award of contract to the selected bidder(s)
- e) Cancellation of Procurement and Re-tendering
- f) In some special cases during Contract execution e.g. - exercise of the option clause or any variation beyond the laid down %age; forfeiture/ release of performance securities; premature termination/ foreclosure of Contract etc.

6. Wherever such competent authority is a Board of Director in a CPSE, obtaining approvals at so many stages, may delay the process and un-necessarily overburden the onerous tasks of such authorities. Therefore, in such cases their approval may only be taken at the stage of "Approval of Financial Evaluation and Award of contract". At other stages approval may be taken from the officer to whom such powers are delegated by the Board.

15.2.3. Evaluation in Different Bidding Systems

All responsive bids are evaluated by the TEC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects.

- a) In case of single stage single envelop tendering, the evaluation of qualification of bidders, technical, commercial, and financial aspect is done simultaneously.
- b) In single stage multiple envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them.
- c) In two stage bids, the PQB/ EoI stage would have already been evaluated as detailed in earlier chapters and this second stage is for evaluation of responses to the Second Stage multiple envelops from the shortlisted qualified bidders.
- d) It is of utmost importance that the authenticity, integrity, and sanctity of unopened Financial Bids must be ensured before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed, and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

15.2.4. Preparation and Vetting of Comparative Statement

The representative of the Proponent department shall prepare a comparative statement of quotations (Technical and Financial) received in the order in which tenders were opened.

- a) In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers.
- b) In case of Financial bid, it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc.
- c) The comparative statement so prepared should be signed by the concerned officers.
- d) It may also be vetted by the Finance for veracity of information in case the bid is above Rs. 50 (Rupees fifty) lakhs

15.2.5. Timely Processing of Tenders:

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

- iii) Proprietary basis/nomination basis.
 - (i) Indigenous – 21 days (ii) Imported – 30 days
- 2. This time schedule is only indicative, and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and Port guidelines, and so on.

15.2.6. Extension of Bid Validity Period

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

15.2.7. Contacting Port during the evaluation:

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

15.2.8. The Stages of Evaluation

The evaluation of the proposals shall be carried out in two stages: at the first stage evaluation of responsiveness and technical proposals is taken up. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded as the envelope containing the financial proposal is not opened till the technical evaluation is complete. The financial proposal of only such bidders will be opened which obtain minimum qualifying marks/standards prescribed for the technical proposal. The evaluation shall be carried out in full conformity with the provisions of the RfP.

15.2.9. Cancellation of Procurement Process/ Rejection of All Bids/Re-tender

1. The Port has the right to cancel the process of procurement or reject all bids [Rule 173 (xix) of GFR 2017] at any time before intimating acceptance of successful bid under circumstances mentioned below. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the ToR or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to re- invite the bids, the ToR should be critically reviewed/modified so as to address the reasons of not receiving any acceptable bid in the earlier Invitation for bids. The Port may cancel the process of procurement or rejecting all bids under circumstances mentioned below:
 - 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 tenders is substantially responsive to the requirements of the Procurement Documents;
 - c) none of the technical Proposals meets the minimum technical qualifying score;
 - d) If effective competition is lacking. However, lack of competition shall not be determined solely based on the number of Bidders. (Please refer to para above also regarding receipt of a single offer).

- e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
- f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the 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 case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below.

- a) If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender.
- b) 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. Approval for re-tendering should be accorded by the Competent Authority based on the reasons/proper justification in writing.

The decision of the Port to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process and bids if not opened would not be opened and in case of manual tenders be returned unopened.

4. Before retendering, the Port is first to check whether, while floating/issuing the enquiry, all necessary requirements, and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for tendering, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

15.3. Preliminary Examination

15.3.1. Consideration of Lack of Competition in OTE/ GTE and LTE

1. Sometimes, against advertised/limited tender cases, the Port may not receive enough bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as 'Single Offer.' Such situation of 'Single Offer' is to be treated as Single Tender [Rule 173 (xix), (xx), and (xxi) of GFR 2017].

It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct.

Re-tendering has costs: firstly, the actual costs of retendering; secondly, the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly, the possibility that the re-bid may result in a higher bid (As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021).

Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- 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.

2. However, as far as delegation/schedule of procurement powers (SoPP, refer Annexure-1) is concerned, competent authority would be as in Single tender mode. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.
3. Unsolicited offers against LTEs should be ignored, however Port should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
 - 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.

15.3.2. Evaluation of Responsiveness of Bids

1. A substantively responsive bid is complete and conforms to the Tender Document's essential terms, conditions, and requirements, without substantive deviation, reservation, or omission. Only substantively responsive bids shall be considered for further evaluation. Other bids shall be treated as unresponsive and ignored. All bids received shall first be scrutinised to identify unresponsive bids, if any. Some important points based on which a bid may be declared as unresponsive and be ignored during the initial scrutiny are:

- a) The tender is not in the prescribed format or is incomplete (i.e. when the required bid formats have not been submitted) or is unsigned (or not signed as per the stipulations in the tender document);
- b) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- c) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder must be a registered MSE unit, but the bidder is a, say, a large-scale unit);
- d) The bid departs from the essential requirements specified in the tender document (for example, the bidder has not agreed to give the required performance security); or
- e) Against a schedule in the list of requirements in the tender enquiry, the bidder has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the bidder will supply the equipment, install, and commission it and also train the purchaser's operators for operating the equipment. The bidder has, however, quoted only for supply of the equipment).
- f) Bidder has quoted conditional bids or more than one bid or alternative bids unless permitted explicitly in the Tender Document.
- g) The bid validity is shorter than the required period.
- h) Non-submission or submission of illegible scanned copies of stipulated documents/ declarations.
- i) The bid has unresolved substantive deviations

15.3.3. Non-conformities between Figures and Words

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

- a) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
- b) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail, and the total shall be corrected; and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail.

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

15.3.4. Discrepancies between Original and Additional/ Scanned Copies of a Tender:

Normally, as far as feasible, no submission of original documents in physical format (other than Cost of Tender Documents, if any, Bid Security and statutory certificates if any) should be asked for in e-Procurement.

- a) In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder.
- b) In offline tenders, discrepancies may be observed in responsive tenders between the original copy and other copies of the same tender set.
- c) 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.
- d) Here also, this issue is to be taken up with the bidder in the same manner as above and subsequent actions taken accordingly.
- e) 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.

15.3.5. Deviations/ Reservations / Omissions - Substantive or Minor

1. During the evaluation of Bids, the following definitions apply:
 - i) "Deviation" is a departure from the requirements specified in the Tender Document;
 - ii) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Document; and
 - iii) "Omission" is the failure to submit part, or all the information or documentation required in the Tender Document.
2. A deviation/ reservation/ omission from the requirements of the Tender Document shall be considered as a substantive deviation as per the following norm, and the rest shall be considered as Minor deviation:
 - 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.

4. Variations and deviations and other offered benefits (techno-commercial or financial) above the scope/ quantum of the Services specified in the Tender Document shall not influence evaluation Bids. If the bid is otherwise successful, such benefits shall be availed by the Port, and these would become part of the contract.

5. During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some bids.

- a) Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document.
- b) There have been also cases where the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of the document. The court ruled that this is a minor irregularity.
- c) The Port reserves the right to accept bids with such minor issues provided they do not constitute any substantive deviation and do not have fiscal impact and, also, do not prejudice or affect the ranking order of the bidders. any minor deviations.
- d) Wherever necessary; the Port shall convey its observation, on such 'minor' issues to Bidder.
- e) If Bidder does not reply by the specified date or gives an evasive reply without clarifying the point at issue in clear terms, that bid shall be liable to be rejected as nonresponsive.

15.3.6. Clarification of Bids/Shortfall Documents

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

- a) Depending on the outcome, such tenders are to be ignored or considered further.
- b) No change in prices or substance of the bid, which may grant any undue advantage to such bidder, shall be sought, offered, or permitted.
- c) 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, to seek any shortfall information/ documents only in case of historical documents which pre-existed at the time of the Bid Opening, and which have not undergone change since then and does not grant any undue advantage to any bidder.

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

15.4. Evaluation of the Quality – Technical Proposals

15.4.1. Responsiveness to ToR

TEC shall evaluate each proposal on the basis of its responsiveness to the ToR. Proposals not responding to the ToR fully and properly will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality.

A technical proposal containing any material financial information shall also be rejected.

15.4.2. Criteria and Sub-criteria

1. TEC shall evaluate quality of the technical proposal by awarding marks so as to make the total maximum technical score of 100 (one hundred) for the criteria and sub-criteria for Quality/ Technical Proposals –
 - (a) the consultant's relevant experience for the assignment;

- (b) the quality of the methodology proposed;
- (c) the qualifications of the key staff proposed; and
- (d) capability for transfer of knowledge (if relevant).

Each proposal should be judged on its own merits and assigned an absolute - not comparative -grade against predefined criteria and sub-criteria.

A comparative evaluation would single out the best proposal on a relative scale, but still could leave the Port with a poor proposal.

2. The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum/minimum marks in terms of percentage may be as under:

A model scheme of maximum/minimum marks in terms of percentage

Rated Criteria	Range of Percentage for Score
1. Consultantcy firm's Specific Experience	5-10%
2. Methodology	20-50%
3. Qualification and relevant experience of Key Staff	30-60%
4. Transfer of Knowledge*	0-10%
Overall	100 %

Note: * If this criterion is not required, the marks can be adjusted against some other criteria. The weight given to the firm's experience can be relatively modest since this criterion has already been taken into account when short listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

Evaluation of only the key personnel is recommended.

Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex.

The TEC shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant and the individual proposed.

The experience criteria mentioned in point 1 in the table above holds true for Consultancy Firm and not for an individual consultant.

3. The TEC shall normally divide the above criteria mentioned in the above Table into sub-criteria. However, the number of sub criteria should be kept to the minimum that is considered essential. For example, methodology Criteria can be sub-divided into sub-criteria as:
 - a) understanding of ToR (30% weightage);
 - b) acceptability and detailing of methodology and work plan (50% weight);
 - c) innovation, if it is important (20% weightage);
4. The criteria for suitability of the key professionals for the assignment can also be divided into:
 - a) Educational qualifications (20% weightage),
 - b) Professional experience in the required area of assignment (80% weight).

Similar to in LCS and EoI a simplified evaluation criteria laying down minimum qualifying fail-pass benchmarks for each criteria/ sub criteria (instead of marking schemes) may also be used in appropriate cases. All offers that pass the qualifying benchmarks are declared as technically qualified and their financial bids are opened.

15.4.3. Rating/ Grading Schemes to Mitigate Subjectivity

1. Technical proposals for consultancy services are an intellectual product. Their evaluation must be based on individual professional judgement of competent evaluators and should not be reduced to a purely arithmetical exercise. The difficulty is to ensure that this judgement is not exercised in an unreasonable or arbitrary manner.
 - a) It is important that subjectivity, implicit to any individual professional judgement, be complemented by transparency, consistency, and fairness.
 - b) The individual evaluator entrusted with the evaluation, when required, should be able to explain to the satisfaction of a qualified reviewer from the higher authority or to enforcement agencies the reason for his/her scoring and recommendation.
 - c) One way to achieve this objective is by adopting a rating/ grading scheme for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.
2. Precise and exact markings of criteria and sub-criteria specified in technical evaluation (especially of unquantifiable criteria e.g. evaluation of Methodology) may neither be feasible nor warranted, especially when there is bound to be

variation among marks by different members of TEC. Instead of assigning marks over the full range of attributes, it is more appropriate to divide the range into 4-5 slabs of ratings. A possible example of rating could be:

Rating/Assessment/Marks/Detailed Evaluation in case of unquantifiable Criteria

A – Very Good – Full Marks - The service providers have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The service providers' staff includes top experts in the field of the assignment. The service providers are considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The service providers operate according to well-established Quality Management (ISO 9002 etc.) Procedures.

B – Good - 80% of Full Marks - The service providers have extensive experience in the field of the assignment and have worked in Regions and Sectors with similar physical and institutional conditions, including similar critical issues. Permanent staff are adequate and highly qualified to cover the requirements of the assignment. The service providers have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.

C – Satisfactory – 60% of Full Marks - The service providers have experience in the field of assignments similar to the one being considered but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues). The service providers are experienced in the use of standard approaches and methodologies required for the assignment. The service providers' permanent staff are adequate.

D – Unsatisfactory – 30% of Full marks - The service provider has experience which is not considered adequate for the quality needed by the Project.

E – Not Relevant – 10% of Full Marks - The service provider's experience has no or little relevance to the Project under consideration.

3. Each member of the TEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR; it also allows TEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation.
4. After the review, the TEC meets to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the RfP.

- a) To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion.
- b) Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP.
- c) The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of the TEC's knowledge of the opened proposal contents.
- d) It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, TEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and sub criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:
 - i) Evaluators may differ, even widely, in their definition, understanding, or interpretation of the same criterion and also because of their subjective experience and understanding of the ToR;
 - ii) Disparities in evaluators' relative generosity or severity in judgment and ratings can easily be magnified by the lack of common definitions of the requirements to be considered for each criterion and sub-criterion;
 - iii) Large differences in scores caused by inadequate understanding of the ToR or improper use of the evaluation criteria and sub-criteria are difficult to reconcile and explain.

5. After the rating/ grading scheme has been defined and proposals have been opened, the evaluation process can begin.

15.4.4. Individual Scoring of Proposals

- a) TEC members should carry out the evaluation independently and score the proposal based on the rating criteria.
- b) The TEC evaluation should be based on the proposal as submitted.
- c) Under no circumstances can the TEC request information or clarifications that may change the proposals.
- d) Issues to be clarified with the selected consultant will have to be discussed during negotiations.
- e) Individual evaluators' results are recorded on pre-established worksheets.

- f) After each member has independently rated all criteria and sub-criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.

15.4.5. Joint Review and Mitigation

1. The TEC should conduct a joint review and discuss the merits of individual evaluations and scores. Some evaluators tend to be generous while others will be rigid in their judgment and ratings. Such disparity does not matter, provided each evaluator is consistent and differences in scores are not too large.
 - a) Large differences should be reviewed and explained; because they often are caused by improper or inaccurate use of the rating system.
 - b) Reconciling differences that are considered too large by the TEC may result in members revising some of their ratings and scores. As such, any changes should be recorded.
 - c) If a discussion is needed to reach a final decision, an independent party should prepare minutes.
 - d) Finally, the scores given by different members may be averaged out.
 - e) During the meeting, the TEC should also comment on the strengths and weaknesses of all proposals that have met the minimum technical score indicated in the RfP. This will help identify any elements in the winning proposal that should be clarified during negotiations.
2. Eventually, for each of the technical proposals, the TEC should calculate the average of the scores allocated to each criterion by all members, establish the technical ranking of the proposals, identify the best, and propose it for award.

The evaluation also establishes whether a proposal passes the minimum qualifying mark (or technical score, normally 75 (seventy-five)) provided for in the RfP. If one or more proposals fail to meet the minimum qualifying mark, both individual and joint assessments must be carefully reviewed and justified. Short-listed consultants are usually discouraged when their proposals are rejected, particularly when they are only a few points below the minimum mark; therefore, the Port should be prepared to debrief consultants to explain the evaluation of their proposals.

15.4.6. Technical Evaluation Report

- a) At the end of the technical evaluation process, the TEC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval.

- b) 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 RfP and comment on their acceptability.
- c) The committee shall record in detail the reasons for acceptance or rejection of the bids analysed and evaluated by it.
- d) The Competent Authority may ask the TEC to explain the report but should not request that scores be changed. It should review the TEC'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 negotiations, in case that proposal is ranked first.
- e) The technical evaluation report is a confidential document, and its contents shall not be disclosed.
- f) All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

A sample format for preparation of technical evaluation report and financial evaluation report including award recommendation to the competent authority is given at Annexure 5.

15.4.7. Declaration of Results

- a) After evaluation of quality has been completed, the Port shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process.
- b) The Port shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date.

15.5. Evaluation of Cost and Selection of Winning Bidder

15.5.1. Basic Considerations

1. In case of offline bids, the financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend.
 - a) The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them.

- b) The name of the consultant, quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened.
- c) No modification to financial proposals is permitted.
- d) The Port shall prepare the minutes of the public opening. Format at Annexure-4 may be used for this purpose.
- e) When electronic submission of proposals is used, this information shall be posted online.

2. For a time-based contract, any arithmetical errors shall be corrected, and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made.
3. For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RfP. The TEC shall make this conversion by using the BC (Bills for Collection) selling exchange rates for those currencies as per the exchange rate quoted by an official source, for example, the State Bank of India. The RfP shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for comparison of costs. This date shall be the date of opening of technical bids
4. For the purpose of evaluation, the total cost shall include all taxes and duties for which the Port makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the RfP document. (Rule 190 of GFR 2017)

15.5.2. Least Cost Selection (LCS)

Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The TEC will put up a report on financial evaluation of the technically qualified consultants to the competent finance authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

15.5.3. Quality and Cost Based Selection

1. Under QCBS selection (QCBS Rule 192 of GFR 2017), the technical proposals will be allotted weightage of 70% (Seventy per cent) while the financial proposals will be allotted weightages of 30% (Thirty per cent) or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP.

- a) Proposal with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer.
- b) Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks.
- c) The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up.
- d) On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained.
- e) The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc.
- f) The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract.
- g) In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1

2. In such a case, an Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

$$B = \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

where

C = Evaluated Bid Price

C_{low} = the lowest of all Evaluated Bid Prices among responsive Bids

T = the total Technical Score awarded to the Bid

T_{high} = the Technical Score achieved by the Bid that was scored best among all responsive Bids

X = weightage for the Price as specified in the BDS

3. The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid
4. As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy five) and the weightage of the technical bids and financial bids was kept as 70: 30 (Seventy: Thirty). In response to the RfP, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks B: 80 Marks C: 90 Marks
5. The minimum qualifying marks were 75 (Seventy five) thus, all the three proposals were found technically suitable. Using the formula T/T_{high} , the following technical points are awarded by the evaluation committee:

A: $75/90 = 83$ points B: $80/90 = 89$ points C: $90/90 = 100$ points
6. The financial proposals of each qualified consultant were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

A: Rs.120 B: Rs.100. C: Rs.110.
7. Using the formula C_{low}/C , the committee gave them the following points for financial proposals:

A: $100/120 = 83$ points B: $100/100 = 100$ points C: $100/110 = 91$ points
8. In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A: $83 \times 0.30 + 83 \times 0.70 = 83$ points.

Proposal B: $100 \times 0.30 + 89 \times 0.70 = 92.3$ points

Proposal C: $91 \times 0.30 + 100 \times 0.70 = 97.3$ points.
9. The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A: 83 points: H-3 B: 92.3 points: H-2 C: 97.3 points: H-1
10. Proposal C at the evaluated cost of Rs.110 (Rupees One hundred and ten) was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

15.5.4. Single Source Selection (SSS) selection

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

15.5.5. Fixed Budget Selection (FBS)

Under FBS, the selection of the consultant shall be made by one of the following two methods:

- a) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
- b) In cases of repetitive or multiple assignments, by empanelling Consultants for a period, using suitable eligibility/ qualification criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the Port.

15.5.6. Negotiations for Reduction of Prices

- a) Negotiation with bidders after bid opening must be severely discouraged, especially in procurement of consultancy services. Since both quality and price are to be considered in procurement of consultancy services, negotiations for reduction in price is not advisable.
- b) In case of abnormally high bids, Port may seek detailed breakup of the offer and compare the same with the estimated cost to analyse the reasonableness and need to negotiate.
- c) However, in case of abnormally low bids, Port may seek written clarifications from the Bidder including the detailed price analysis of its Bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities etc.
- d) If, after evaluating the price analysis, 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.

15.5.7. Evaluation of Concurrent Application: MSE and Make in India Policies

The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the Port on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the Port as well as bidders, guidelines were issued by DoE (Notified vide OM No.F.1/4/2021-

PPD issued by Department of Expenditure dated 18.05.2023). These guidelines are explained in **Appendix-8**, along with examples.

15.6. Negotiations to Freeze Description of Service

1. In the Consultancy Services contract, the accepted ToR and methodology etc are laid down in form of 'Description of Service'. Therefore, before the contract is finally awarded, discussions may be necessary with the selected bidder to freeze these aspects, especially when, it is discouraged during evaluation of technical proposals to seek clarifications on these matters.
 - a) However, such technical discussions do not amount to negotiations in the sense, the word is used in Procurement of Goods and Works.
 - b) However, in Procurement of Consultancy, this discussion is termed as Negotiations since these discussions may have some financial ramifications at least for the bidder.
 - c) Negotiations are not an essential part of the selection process. In many cases, however, it is felt necessary to conduct negotiations with the selected consultant for discussions of the ToR, methodology, staffing, Port's inputs, and special conditions of the contract.
 - d) These discussions shall not substantially alter (or dilute) the original ToR or terms of the offer, lest the quality of the final product, its cost, and the initial evaluation be vitiated.
 - e) The final ToR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.
2. Financial negotiations shall only be carried out if, due to negotiations, there is any change in the scope of work which has a financial bearing on the final prices or if the costs/cost elements quoted are not found to be reasonable.
 - a) In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the consultant for other similar assignments.
 - b) However, in no case such financial negotiation should result in an increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations.
 - c) If the negotiations with the selected consultant fail, the Port shall cancel the bidding procedure and re-invite the bids.

15.7. RfP, Evaluation and Award Stage – Risks and Mitigation

Risk-1

No key expert proposed from the main qualified partner in JV: It is seen that though the shortlisting and contract is won by a JV on the basis of qualifications of the main qualified partner firm, but no key experts (nor team leader) are proposed from that firm. As consultancy assignment is an intellectual product, the effective contribution of the qualified partner firm can only come from experts (in particular the team leader) who have worked for sufficient time with the main qualified consultant.

Mitigation-1

RfP should specify that the team leader proposed should have worked for a sufficient number of years (say, two to three years) with the main qualifying firm. If this is not complied with it could be a ground for the proposal being termed as non-responsive.

Risk-2

Request for substitution of key experts at the time of contract negotiation: After the firm is invited for negotiation, it asks for substitution of key staff in the contract. This is an unacceptable practice unless the selection process is unreasonably delayed.

Mitigation-2

Any request for substitution should be examined very closely and agreed only if permitted by the RfP

Risk-3

Presence of one or more unsigned CVs in technical proposal: If a proposal contains one or more unsigned CVs, it should be scrutinised carefully. It can be that the CV is used without permission or commitment from the concerned key expert.

Mitigation-3

If few CVs are not signed by the key expert, the evaluation should be carried without considering these unsigned CVs and, if this firm is still a winner, clarification may be sought at the negotiation stage for resolution. In no case substitution of such key experts be agreed to at the contract negotiation stage. If most of the CVs are not signed by the respective proposed key experts, the proposal should be termed as non-responsive and rejected at the technical evaluation stage.

Risk-4

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

Mitigation-4

TEC should give an undertaking at the appropriate time that none of the members has any CoI with the companies/agencies participating in the tender process. Any member having an CoI with any company should refrain from participating in the TEC. Some members of a TEC may be subordinate to or related others in a strictly hierarchical

organisation, so that they are not free to express independent views – such a situation must be avoided when constituting the TEC.

Risk-5

Discriminating against a Best Value Bid: In case a bidder's bid (not in the good books of the Port) becomes the best value bid as per the evaluation criteria, some of the following actions may have risks of misuse. There is also a reverse risk in these actions if a favourite becomes best value bid:

Mitigation-5

Mitigation for each type of risk is mentioned below.

Risk-6

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-6

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-7

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-7

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

Risk-8

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

Mitigation-8

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

Risk-9

Unwarranted delays in finalizing or varying the terms of preannounce contract agreement: even after the TEC recommendations are accepted, signing of the contract is delayed on one pretext or the other. Although there is a standard contract form in the tender

documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.

Mitigation-9

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

Risk-10

Anti-competitive practices: Bidders, which would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get VfM in a tender process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.

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

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

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

Bid rotation: In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.

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

Mitigation-10

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

Chapter-16

Award of Contract

16.1. LoA to Successful Bidder

1. Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible. 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 if ordered as part of Consultancy contract, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities.
 - a) 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).
 - b) Letter of Award - LoA shall state the sum (hereinafter and in the contract called the "Contract Price") that the Port shall pay the contractor in consideration of the supply of the Services/Goods.
 - c) The Letter of Award (LoA) shall constitute the legal formation of the contract, subject only to the furnishing of performance security as per the provisions of the sub-clause below.
 - d) The Port, at its discretion, may directly issue the contract subject only to the furnishing of performance security, skipping the issue of LoA.
2. Before issuing a Letter of Award (LoA) to the successful Bidder(s), the Port may, at its discretion, ask Bidder to submit for verification the originals of all such documents whose scanned copies were submitted online along with the Technical bid. 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 bid shall be liable to be rejected as nonresponsive in addition to other punitive actions in the Tender Document. The evaluation of Bids shall proceed with the subsequent ranked offers.
3. The value of Contract should include Taxes/ duties/ levies, if any.

4. In respect of contracts for procurement of Consultancy Services valued below Rupees two and a half lakh, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.
5. In some cases, successful bidder (an OEM or an agent representing a principal firm) requests that the Contract may be placed on their subsidiary or an authorised dealer. This is legally not acceptable as the Contract can only be placed on the bidder in whose name the bid has been submitted, not on any third party.
6. It shall be mandatory for the successful bidder to get registered on GeM and obtain a unique GeM Seller ID. before the placement of LoA or the contract. This ID shall be incorporated in the contract.

16.2. Publication of Award of Contract

Publication of Award of Contract and Return of EMD of Unsuccessful Bidders

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

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

16.4. Acknowledgement of Contract by Successful Bidder

1. After the successful bidder is notified that his bid has been accepted, the contractor/consultant should acknowledge and unconditionally accept the work order/LOA and enter into an agreement with the Port within 14 (fourteen) days from the date of issue of the contract in case of OTE and 28 (twenty-eight) days in case of GTE.
 - a) Such acknowledgements may not be required in low value contracts, below Rupees one Lakh.
 - b) While acknowledging/accepting the contract, the supplier/consultant may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be investigated for necessary action and, thereafter, the supplier's unconditional acceptance of the contract obtained.
 - c) If both parties (Port and the supplier/consultant) simultaneously sign the contract across the table, further acknowledgement from the supplier is not required.
 - d) It should also be made known to the successful bidder that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful bidder).
 - e) 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.
 - a) The words "for and on behalf of "Kamarajar Port Limited" should follow the designation appended below the signature of the officer authorised on this behalf.

- b) The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DoP.
- c) No contract on behalf of Port should be entered into by any authority which has not been empowered to do so.

16.5. Framing of Contract

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

- 1. Any agreement shall be issued strictly as per approved TEC recommendations, be vetted by Finance, and approved by Competent Authority.
 - a) The terms of contract must be precise, definite and without any ambiguities.
 - b) The terms should not involve an uncertain or indefinite liability, except in the case of a cost-plus contract or where there is PVC in the contract.
 - c) No contract involving an uncertain or indefinite liability, or any condition of an unusual character should be entered into without the previous concurrence of Finance and approval of the Competent Authority.
- 2. All contracts shall contain a provision for
 - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 - b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair, or rectify defective goods/works/services;
- 3. All contracts for supply of goods besides consultancy services should reserve the right of the Port to reject goods which do not conform to the specifications;
- 4. Payment of all applicable taxes by the contractor or supplier; and
- 5. When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Port at any time on the expiry of six months' notice to that effect.
- 6. Standard forms of contracts should be invariably adopted, except in following cases:
 - a) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of Competent Authority is to be obtained; and

- b) Copies of all contracts and agreements for purchases of the value of Rs. 50 (Rupees Fifty) lakh and above, and of all rates and running contracts entered into by the departments should be sent to the CVO.

16.6. Procurement Records

- 1. The Port must maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:
 - a) documents pertaining to determination of need for procurement;
 - b) description of the subject matter of the procurement;
 - c) Statement of the justification for choice of a procurement method other than open competitive tendering;
 - d) Documents relating to pre-qualification and registration of bidders, if applicable;
 - e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
 - f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
 - g) Bids evaluated, and documents relating to their evaluation; and
 - h) Contracts and Contract Amendments
 - i) Complaint handling, correspondences with clients, consultants, banks.
- 2. The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Tender Document and documents relating to its and formulation, publishing and issue/uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TEC report) relating to pre-qualification, evaluation, Award of Contract; and finally, the Contract copy, should be kept on the file.
 - a) In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume.
 - b) To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement file.
 - c) In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

Chapter-17

Special Types of Engagements

17.1. Single Source Selection (SSS)

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

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

17.2. Selection of Individual consultants/ service providers

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

- iv) Selection will be carried out by the TEC which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment.
- v) The TEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

d) **Direct Negotiation:** Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as:

- (i) tasks that are a continuation of previous work that the consultant/ service provider has carried out and for which the consultant/ service provider was selected competitively;
- (ii) emergency situations resulting from natural disasters; and
- (iii) when the individual is the only consultant/ service provider qualified for the assignment. Individual consultants/ service providers may be (among others) independent consultants/ service providers; consultants/ service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies.

e) **Staff or Associates of Consultancy/ service provider Firms:** If the candidate is permanent staff or associates of a Consultancy firm the conflict-of-interest provisions described in these guidelines shall apply to the parent firm.

17.3. Selection of Specialized Agencies/ Institutions

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

4. Individual consultants/ service providers recruited from agencies and institutions may be selected in the same way as any other independent consultants/ service providers.

17.4. Selection of Nongovernmental Organizations (NGO)

1. Non-governmental organizations (NGOs, not-for-profit organisations) may be hired for Consultancy/ NC Services, if they express interest and/ or if the Port finds their qualifications satisfactory. Assignments which emphasize experience in and bonding with grassroot historically disadvantaged communities, e.g., experience in community participation and in-depth local knowledge are typically attributed to NGOs and short lists may comprise NGOs entirely. In this case, QCBS should be followed, and the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:
 - a) History of work with grassroots communities and evidence of satisfactory performance;
 - b) Familiarity with participatory development approaches and low-cost technologies;
 - c) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
 - d) Committed leadership and adequate management;
 - e) Capacity to co-opt beneficiary participation.
2. Port may select NGOs using SSS, provided the approvals and procedures laid down for the same are followed. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available, and competition is impractical.

17.5. Procurement Agents

1. Hiring of Procurement agents (PAs) can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment.
 - a) If the role of Procurement Agents primarily involves intellectual analysis, strategic planning, spend analysis, cost control, and advisory functions, it would be appropriate to hire them as Consultancy Services i.e. when they are asked to design/ implement new system or improve value for money or develop strategic procurement or carry out market building/ sourcing etc., where quality weightage of more than 30% is called for.

- b) On the other hand, if their responsibilities are only outsourcing of routine procedures without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable, i.e. when they only operate the existing procedures and decisions are made by the client himself, where quality weightage can be 30% or less.
- 2. When Procurement agents (PAs) as consultants are specifically used as "agents" handling the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they are selected under QCBS, with cost being given a weight of up to 50 (fifty) percent. If the weight of the cost element adopted were as high as 50 (fifty) percent, financial considerations would dominate the selection, creating the risk of an unacceptably lower service quality. In such cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high.
- 3. When Procurement Agents provide only advisory services for procurement or act as "agents" for a whole project in a specific unit of Port, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based contracts, as specified for other Consultancy assignments.

17.6. Inspection Agents

- 1. Hiring of Inspection agents (IAs) to inspect and certify goods before shipment or on arrival in the Port country, can either be done as a Consultancy Service or Non-consultancy service, depending on the objectives and scope of assignment. The inspection by such agents usually covers the assurance of quality and quantity of the goods concerned, but occasionally they may be entrusted with related services.

If the role of Inspection Agents primarily involves intellectual analysis, inspection of highly sophisticated machinery/ goods, inspection of non-measurable parameters it would be appropriate to hire them as Consultancy Services i.e. when non-repetitive inspection of goods requiring intellectual judgement or carry out vendor rating or provide inputs on reasonableness of prices etc., where quality weightage of more than 30% is called for.

On the other hand, if their responsibilities are only operational/ procedural, standardized goods/ commodities, without intellectual decision making, classifying them as outsourcing of Non-Consultancy Services would be suitable,

i.e. when they only inspect within the established protocols, repetitive work without intellectual inputs, where quality weightage can be 30% or less.

2. Inspection agents are selected using QCBS, with cost being allocated a weight of up to 50 (fifty) percent. Payment is usually based on a percentage of the value of goods inspected and certified. If the weight of the cost element adopted were as high as 50 (fifty) percent, financial considerations would dominate the selection, creating the risk of an unacceptably lower service quality. In such cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high.

17.7. Financial Advisors

1. Port may hire financial institutions to implement two main types of assignment:
 - a) in the preparation of studies and financial Consultancy; or
 - b) As advisers on financial restructuring, Mergers & Amalgamations or demerger etc.
2. In the first case, the advisers can be selected under any of the methods described in earlier chapters (that is, whichever is considered most suitable, depending on the scope of work of the assignment).

In the second case, QCBS shall be adopted, whereby the RfP specifies technical evaluation criteria similar to those relevant to standard Consultancy assignments.

The financial proposal would include two distinct forms of remuneration:

- a) a lump-sum retainer fee to reimburse the consultant/ service providers for services made available; and
 - b) A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.
3. Depending on the type of activity mentioned above and the circumstances of the Port, the RfP specifies the relative weights assigned in the financial evaluation to the retainer and to the success fee, respectively.
 - a) In some cases, the Port offers a fixed retainer fee, and the consultant/ service providers must compete only on the success fee as a percentage of the value of the privatization transaction.

- b) For QCBS (notably for large contracts), cost may be given a weight higher than recommended for standard assignments (such as 30 (thirty) percent), or the selection may be based on LCS selection.
- c) The RfP shall specify clearly how proposals will be presented and how they will be compared.
- d) Success fees are most appropriate when it is relatively easy to measure results in meeting the Port's objective (successful sale of assets) and when the success is at least partly related to the efforts of the consultant/ service providers involved. Therefore, success fees are more likely to be adopted at the transaction stage, because by that time the Port's objective is to maximize revenue.

17.8. Auditors

- 1. Quality audits of Port expenditures, are an important accountability mechanism for ensuring financial integrity. Therefore, Ports have a vital fiduciary responsibility to ensure that their audit is of the highest quality.
- 2. Auditors typically carry out auditing tasks under well-defined ToR and professional standards.
 - a) The ToR should consider applicable statutory, Port's requirements and applicable auditing and accounting standards.
 - b) Scope of Audit should cover the jurisdiction, Type of audit, contract period and any additional services.
 - c) The Technical qualifications should be based on licensing requirement, general and similar experience, quality certifications, quality and adequacy of staffing, financial capability, auditing approach and scheduling of the auditor.
 - d) Auditors' independence and lack of conflict of interest is also an important requirement.
 - e) A presentation or interview also may be part of the RfP process. A pre-proposal conference may also be considered.
- 3. Since in recent time quality of audit has been a matter of concern, selection of auditors may preferably be done as a consultancy service on QCBS basis with emphasis on weightage of quality.

17.9. Public competition for Design of symbols/logos

1. Port may require to conduct competitions for the design of logos/symbols (Rule 196 of GFR 2017) for their use, which should be conducted in a transparent, fair, and objective manner. Following guidelines shall be followed by Port, while conducting public competitions for design of symbols/ logos for their use:
 - a) Design competitions should be conducted in a transparent, fair, and objective manner;
 - b) Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the web site of the Port, as also the Central Public Procurement Portal. The existing e-publishing module can be utilized;
 - c) Provisions of any applicable laws, including the Official Languages Act and the Emblems and Names (Prevention of Improper Use) Act, should be kept in view while conducting the competition;
 - d) A detailed Competition Notice should be drawn up and made public. The notice should, *inter alia*, details on the following:
 - i) The objectives of the design competition and the key features expected in the proposed design;
 - ii) Qualification criteria, if any, for participation in the competition;
 - iii) The process of evaluation and evaluation criteria - whether it would be single or multi stage (for symbols/ logos intended to represent a drive/project/ entity of National Importance, it may be decided to have the selection through public voting. If so, the modalities should be clearly specified).
 - iv) The manner of submission of entries and the format/ details etc. expected with the design;
 - v) Whether multiple designs can be submitted by one participant;
 - vi) The last date and time for submission;
 - vii) Details of entry fees, if any and the manner of submission of the same;
 - viii) Expected date for announcement of results and the manner in which the results will be intimated;
 - ix) The number of prizes to be awarded and the amount payable for the successful design(s).

- x) It may be clearly stipulated that the intellectual property rights of the successful design(s) would rest with the sponsoring agency. The status of the unsuccessful designs and whether it is intended to return them should be indicated clearly.
- xi) If the selection is to be done by a jury of experts nominated for the purpose, the composition of the jury may also be notified.

2. Once the completion is over and the winning entry selected, this again should be notified in the public domain. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may be notified.
3. It is evident that every competition would have distinct features and therefore, the aforesaid guidelines should be used as a general principle while preparing the detailed procedure/rules for each such competition.

17.10. Procurement of IT Services

1. Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:
 - a) bespoke software development;
 - b) cloud based services and
 - c) composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth, and operation/maintenance of the system for a define period after go-live etc.
2. IT services procurement involves aligning business goals, assessing vendor capabilities, and adopting agile practices. Whether it's bespoke software, cloud services, or system integration, a well-defined procurement process ensures optimal outcomes for organizations.
3. **QCBS Selection:** Since quality is of prime importance in procurement of IT services, QCBS selection with due emphasis on quality weightage (even up to 80%, depending on quality requirements) may be used. In cloud services in particular, alternative pricing models may be allowed to be quoted.
4. **Caution against Restrictive and discriminatory Qualification Conditions:** Ministry of Electronics & Information Technology (MeitY) has cautioned (D.O. No. 10(13)/2022-EG-II dated 25.08.2022) that qualification conditions for cloud service provider should not be restrictive/ discriminatory like insistence on 'Gartner's 'Magic Quadrant etc., and very high financial turnover, which impede the domestic service providers and does not add value to the users. They have also

cited Department for Promotion of Industry and Trade & Internal Trade (DPIIT), Ministry of Commerce and Industry has similar advisory (OM No. P-45021/121/2018-B.E.-II) dated 20.06.2019) that such discrimination against domestic players is a violation of Make India Order which provide purchase preference to local content requirement. Therein, common examples of restrictive and discriminatory conditions against the local suppliers, in procurement of IT Services have been cited as:

- a) Restrictive and Discriminatory Eligibility Criteria in Tender Conditions
 - i) Mandatory Presence in Gartner Magic Quadrant - IT and Telecom Products
 - ii) Mandatory USFDA/ European CE - Medical Devices ,
 - iii) Excessive Turnover requirement Rs.1000 Cr for-procurement of Rs.70 Cr
 - iv) Excessive past Experience - 10 years,
 - v) Export experience to G8 countries
 - vi) Additional requirement of Bank Guarantee for Local Supplier
 - vii) Delayed Payment Terms to Local suppliers
- b) Restrictive and Discriminatory specifications -Foreign Brands specified
 - i) CISCO, NEC, Alcatel, Siemens - Telecom Products
 - ii) HP, Dell, Lenovo - IT products
 - iii) OTIS, Mitsubishi, Schindler, Kone, Johnson - Lifts
- c) Restrictive and Discriminatory specifications/ Preapproved foreign brands in works/ turnkey projects
 - i) Local manufacturer not included in pre-approved list.
 - ii) Specification tailor made to suit foreign products I
 - iii) Foreign technical standards indicated in the specification I
 - iv) Technical parameters to favour foreign products viz. (-) 25-degree temperature compatibility (or EPBX equipment being procured for airport in Central India)

5. **Bespoke Software Development:** Bespoke software development involves creating customized software solutions tailored to specific organizational needs. Unlike off-the-shelf software, bespoke applications are designed from scratch, considering unique requirements, workflows, and business processes. Here are key considerations for procuring bespoke software:

- a) Defining Requirements: The procurement process begins with a thorough understanding of business needs. Engage stakeholders, gather functional and non-functional requirements, and define clear objectives. Stipulate an agile development approach that allows iterative development, frequent feedback, and adaptability. Agile ensures alignment with evolving requirements and minimizes risks.
- b) Technical Qualifications: Evaluate bidders based on their expertise, track record, and ability to deliver custom solutions. Consider factors like technical proficiency, domain knowledge, scalability, security, and support and project management capabilities.

6. **Cloud-Based Services**: Cloud-based services offer scalability, flexibility, and cost-effectiveness. When procuring cloud services, consider the following:

- a) Defining Requirements:
 - i) SLAs and Data Privacy: Define service-level agreements (SLAs) regarding uptime, performance, and support. Address data privacy and compliance requirements, especially if handling sensitive information.
 - ii) Migration Strategy: Plan the migration process carefully. Assess existing applications for cloud readiness, choose the right migration approach (lift-and-shift, re-architecting, or hybrid), and ensure minimal disruption.
- b) Service Models: Understand the different cloud service models:
 - i) Software as a Service (SaaS): Ready-to-use applications hosted by the provider.
 - ii) Platform as a Service (PaaS): Development platforms and tools for building custom applications.
 - iii) Infrastructure as a Service (IaaS): Virtualized computing resources (servers, storage, networking).
- c) Technical Qualifications: Evaluate cloud providers based on factors such as reliability, security, compliance, data sovereignty. Consider well-established cloud services providers.

7. **Composite IT System Integration Services**: Composite IT system integration involves connecting disparate systems, applications, and data sources to create a cohesive ecosystem. Here's how to approach procurement:

- a) Defining Requirement:

- i) Integration Strategy: Define the integration scope, including APIs, middleware, and data synchronization. Consider whether real-time or batch processing is required.
- ii) Interoperability and Scalability: Ensure that integrated components can communicate seamlessly. Scalability is crucial to accommodate future growth and changing business needs.
- iii) Testing and Maintenance: Specify testing requirements (unit, integration, and end-to-end testing). Also, outline ongoing maintenance and support expectations.

b) Technical Qualification: Select vendors with expertise in integrating complex systems. Look for experience in integrating diverse technologies (ERP, CRM, legacy systems) and handling data transformations.

8. For more details, Ministry of Electronics & Information Technology's latest Model RfP Documents for Selection of Implementation Agencies (https://www.meity.gov.in/writereaddata/files/model_rfp_for_selection_of_implementation_agencies-2018.pdf) (which includes Guidance Notes) may please be referred.

Chapter-18

Port Specific Engagements

Port requires experienced consultants to perform in certain Port specific assignments. In such cases, Port has option of either going for Limited Tender Enquiry, or Special Limited Enquiry or even on nomination basis. Port may empanel the required consultants in various categories or may even follow the empanelment done by either DOE or Ministry or by Indian Ports Association. The categories may be for the following.

- i) Transaction Advisers
- ii) Technical Consultant
- iii) Project Advisers
- iv) Project Management Consultants (PMC)
- v) Independent Engineers
- vi) Environmental Consultants
- vii) Internal Auditors
- viii) Inspection / Survey Agencies

18.1. Transaction Advisers

Public Private Partnerships (PPP) are increasingly becoming popular in every infrastructure development. PPPs are an efficient mechanism for ushering in Private sector, efficiencies in construction and management of Public infrastructure. Given the complexities of the PPP, the entire value chain of the PPP infrastructure development requires critical support and advice in financial, legal and technical domains for effective project structuring and timely implementation. Hence a need is felt to have Transaction Advisers for every PPP project.

To facilitate the Organisations to eliminate delays in appointment of TAs, Department of Economic Affairs, Ministry of Finance vide F. No. 2/3/2021-PPP, dt. 01.07.2022 & dt.05.02.2024 circulated a list of Empanelled Transaction Adviser for Public Private Partnership Projects. This will greatly simplify and expedite the process of procuring advisory/consultancy services by the Project Sponsoring Authorities. Hence Ports may float an RfP and adopt an LTE process by sending the RfP to the empanelled list of TAs only. Ports may access the panel for the purpose of appointing TAs from out of the panel which is valid for a

period of 3 years from the date of notification which can be further extended for a period of 2 years on satisfactory performance of TA.

DEA has Provided a process for selection of TA from the Panel.

1. Establish Project Requirements
2. Define Objectives of the Assignment
3. Develop Terms of Reference (ToR) for the assignment
4. Define eligibility criteria for selecting the TA from the panel
5. Identify Key personnel required to execute the project
6. Publish RfP and seek Technical presentation and Financial quotes from the Panel.
7. Evaluate proposals from panel members
8. Selection of Successful panel member
9. Sign a Contract with the Successful Panel member
10. Commencement of Service
11. Report performance of panel member to the DEA.

18.1.1 Issue of RfP, Evaluation, Award of Work and Monitoring of work

The procedure for issue of RfP, necessary formats/clauses to be included in RfP, submission of RfP, opening, evaluation by TEC and Award of Work to the consultants is given in Chapter-15 of this manual. Monitoring of work and the payment to the consultants etc are dealt in Chapter-19-21 of this Manual.

18.2. Technical Consultant

To begin the process of project structuring, it would be essential to engage technical consultants for preparing a feasibility report. In case of complex projects, a pre-feasibility report can also be considered. Besides establishing the physical and technical feasibility of a project, the feasibility report should also include a broad assessment of the financial viability of the project. When the feasibility of a project is established, it would be necessary to engage financial consultants for developing a financial model for the project and for assisting the project authorities in conducting the bid process.

18.2.1. Role of technical consultants:

Technical consultants are normally required for preparing Feasibility Reports, setting performance targets and determining investment needs. They are

expected to be well conversant with the physical aspects of the infrastructure sector under consideration. They can provide a range of skills and services including general and architectural design, costing and quantity surveying, planning and traffic studies, technical feasibility studies and reviews, lifecycle costing and analysis, and project monitoring and management. In short, they are instrumental in defining the project.

18.2.2. Selection process

The appointment of consultants should not be treated in the same manner as procurement of goods and other services where the bid is awarded to the lowest financial bidder based on pre-determined specifications. This is so because what sets consultancy services apart from other procurements is the advisory and intellectual nature of services which are not amenable to precise quantification.

18.2.3. Terms of Reference

The Terms of Reference (ToR) of the consultant provide a brief description of the services the consultant is required to perform. They should include background information, a statement of objectives, a precise scope of work, the nature and number of key personnel to be deployed, schedule for completion of task, the indicative work plan, level of effort, the inputs to be provided by the Project Authority and the deliverables/ outputs that will be required from the consultant.

18.2.4. Issue of RfP, Evaluation, Award of Work and Monitoring of work

The procedure for issue of RfP, necessary formats/clauses to be included in RfP, submission of RfP, opening, evaluation by TEC and Award of Work to the consultants is given in Chapter-15 of this manual. Monitoring of work and the payment to the consultants etc are dealt in Chapter-19-21 of this Manual.

18.3. Project Advisers

To meet the demand of the Market for Infrastructure, Ports are invariably going for PPP projects and sometimes developing the infrastructure on their own. A number of projects are being planned to develop the infrastructure: Be it a berth construction or development of yards, warehouses, back up facilities, equipment needs and connectivity. In such a case, Port may go in for an RfP for each project for selection of TAs or Technical consultants for each project from among the empaneled consultants. Since it will be a time-consuming process, Port may alternatively go for a Project Advisory team (PA team) for a period of two or three years the scope of whom is "Provide Legal, Technical and Financial Transactions for all ongoing & future proposals of the Port". The selection can be from the DEA or IPA empaneled team (as the case

may be) by issuing an RfP with Financial bid only for the given scope of work, duration and deployment of key experts.

Since the port cannot define the requirements for a particular project in view of a bucket of projects being planned, the objectives of the assignment may have to be general in nature. The scope of the consultants can well be defined to suit the requirement of any project that is being planned.

18.3.1. PA team composition

The proposed PA team will consist of following officers, namely: 1) One Team leader with technical background preferably a graduate/post graduate Civil Engineer having at least 5 years' experience in successful handling and award of PPP/BOT/Port infrastructure Projects. 2) One Legal Expert having minimum 3 years' experience in dealing with RFP, RFQ, Model Concession or Draft Concession documents pertaining to PPP/BOT Projects 3) One Financial Expert, preferably with C.A./ICWA/MBA (Finance) qualification, with minimum 3 years' experience in Project Appraisal, Project Finance, preparation of tariff proposals, scrutiny and evaluation of PPP/BOT/Project Tenders. The above Team will work at the premises provided by Port. The team will function during all the working days and, if required, on holidays also during exigencies.

18.3.2. Scope of Work

- i) Providing Transactional and Legal advice as required by Port.
- ii) Provide necessary technical, financial and legal assistance from time to time
- iii) Scrutiny of various policies /guidelines issued by statutory authorities from time to time and suggest any action to be taken by the Port.
- iv) Frame the various formats by incorporating information there in to be sent to concerned authority.
- v) To work out sustainable Royalty for PPP Project by preparing a Feasibility Report.
- vi) Frame bidding documents & assist in subsequent evaluation thereof for appointment of consultants / technical advisor/PMC/IE for PPP and other projects.
- vii) Assist in furnishing clarifications to queries from RFQ applicants/bidders, Ministry, or any other statutory Authority.
- viii) To scrutinize security clearance information of bidders/RFQ Applicants.

- ix) To frame proposals like but not limited to SFC, EFC, PPPAC, CCEA etc. to take approval of competent authority
- x) Assist in furnishing clarifications/replies to RFP applicants.
- xi) To frame presentation to be made by Port before Authorities in relation to finalization evaluation to approval of proposal.
- xii) To attend the meeting and assist Port officials in respect to finalization, evaluation & approval of project.
- xiii) To frame documents for appointing of Independent Engineer/PMC and evaluation thereof.
- xiv) Any other matter related to procedural/ substantive issues of PPP as decided by the competent authority of Port.
- xv) After signing of agreement with concessionaire/contractor, provide financial/legal opinion on Project management

18.3.3. General terms & conditions

- i) Duration of Contract (say two or three years)
- ii) Price quoted for the period to be stable with no escalation or with escalation for the second year (to be specified).
- iii) The price quoted by the bidder is deemed to include expenditure for office furniture, stationery, computers, communication equipment, internet, local and outside transport etc. for day to day running of the office.
- iv) The individual experts posted shall not be changed without the prior consent of the Port. For absence of any of the individual experts, other than the permitted holidays, necessary replacement of manpower is to be provided.
- v) The sequence and priority of the work to be undertaken will be solely at the discretion of higher authorities of Port.

18.3.4. Payment terms

The payment will be released on monthly basis on providing a Certificate for work done including monthly attendance of the manpower and recommendation of the Project monitoring Office of the Port.

18.3.5. Other Conditions

Formats for submission of RfP, Financial bid, format of Agreement, payment claim formats, termination clause, taxes and duties, bank guarantee to be provided etc shall be clearly brought out in the RfP.

18.4. Project Management Consultants (PMC)

PMC plays an important role in construction projects by providing services from beginning to completion of projects. Keeping the client/customer's requirements in mind, creating a win-win situation, and the principles of pro-activeness are required at every stage of the project life cycle. Using PMC provides the Port an effective management solution to enhance the efficiency of a project in construction.

- a) PMCs manage the project by applying their experience, skills, and knowledge at several stages while simultaneously dealing with various challenges such as safety issues, engineering issues, inter contractor coordination issues, long lead material issues, constructability issues, design issues, and more.
- b) A well-organized Project Management Consultant approach includes adopting different types of tools for the higher management such as quality diligence & delivery sessions in the team, regular quality audits, training on various fields, conduction of brainstorming sessions, reporting dashboard, and more.
- c) Businesses use project management outsourcing to improve efficiency and success. External project managers bring special skills that boost companies. This method helps businesses access global talent and skills they don't have in-house.
- d) Outsourcing project management has different uses. A company might hire an outside manager for certain tasks or whole projects. This lets companies focus on their main work while gaining from the manager's knowledge.
- e) Outsourcing can also be cheaper than having an in-house project manager. This makes it an attractive choice for companies of all sizes and industries.
- f) Plus, outsourcing projects gives you access to expertise your team might not have. Certified professionals can manage complicated projects well, leading to better results.
- g) External providers bring a fresh perspective, too. Their objective insights can help businesses make smarter choices, increasing project success.
- h) Project management outsourcing can cover various tasks, from full project management to specific tasks. This includes planning, risk management, and performance tracking. Outsourcing these parts can improve project results significantly.
- i) But, outsourcing should be done carefully. It's critical to keep clear communication and have strong project governance. This ensures projects align with company goals.

- j) Protecting your business is also key. Research your outsourcing partner well and use NDAs and data protection agreements to avoid risks.
- k) Outsourcing project management can cut costs by up to 30% compared to doing it all in-house. It streamlines your operations and can save you money.
- l) Project management outsourcing means projects get done faster. Outsourced teams often work quicker than in-house ones, especially if Port staff isn't familiar with the project's specifics. This speed boosts the quality and turnaround of Port projects.
- m) However, outsourcing isn't without its challenges. One big issue is keeping everything coordinated. Working with teams in other places needs solid plans for smooth collaboration.
- n) There's also the risk of losing control over projects. Relying on others means companies need to watch closely and manage their team well.
- o) Differences in work culture can lead to conflicts. It's important to set clear expectations and communicate well to avoid issues.
- p) Lastly, keeping data safe is a big worry. Sharing sensitive information raises risks, including possible leaks to rivals. Strong security steps are crucial to protect company secrets.

18.4.1 Role of PMC

Role of PMC team starts after the award of a Project to a contractor and during execution of the work. The Consultant shall be the 'Engineer' for the project. The PMC shall make the necessary measurements and control the quality of works and shall make all engineering decisions required during the implementation of the Contract.

However, the Engineer shall seek prior approval of the Port with regard to issue of

- i) Variation order with financial implications,
- ii) Variations in work quantities which attract for fixation of rates,
- iii) Sanction of additional items,
- iv) Sums or costs and variations of rates and prices;
- v) Approve the subletting of any part of works;
- vi) Approve any extension of contractual time limits and
- vii) Stopping and/or termination of the Contract for Works.

18.4.2. Procedure for appointment of PMC

PMC may be appointed by following the online or offline tender procedure. The mode of tender may be Limited tender (from the short list of empaneled consultants of the Port/IPA/Ministry/Government), an Open tender in case of project above a threshold limit. The duration of the contract shall coincide initially with the Project completion date or a month or two after completion of all the formalities post project completion.

The steps to be followed for the appointment are same as detailed in this manual.

The tender should clearly spell out the following:

- i) The scope of the tender
- ii) Team composition with the number of Key personnel required (eg: Team leader cum Resident Engineer, Assistant Resident Engineer, Environmental specialist, Mechanical engineer, Electrical engineer and so on)
- iii) Qualification and experience of key personnel and procedure for substitution
- iv) The Terms of Reference
- v) Eligibility criteria
- vi) Technical proposal
- vii) Financial proposal
- viii) Criteria, scoring system and Procedure for evaluation and award,
- ix) Monitoring of PMC by the Port officials
- x) Periodicity of reporting.
- xi) Quality checks

18.4.3. Payment terms

The payment will be released on monthly/milestone basis on providing a Certificate for work done including monthly attendance of the manpower and recommendation of the Project monitoring Office of the Port.

18.4.4. Other Conditions

Formats for submission of RfP or tender, Financial bid, format of Agreement, payment claim formats, termination clause, taxes and duties, bank guarantee to be provided etc shall be clearly brought out in the RfP/tender.

18.5. Independent Engineers

Article 5 of the Model Concession Agreement for PPP projects mandates the Port being the Concessioning Authority to appoint an Independent Engineer to monitor the PPP project. Independent Engineer shall be a technical consultancy firm selected in accordance with provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof. If any panel of such firms is prepared by Indian Ports Association for the purpose, The Concessioning Authority shall in the procurement documents published by it, set out in reasonable detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability.

- a) The Concessioning Authority shall within 30 (thirty) Days of the date of the PPP Concession Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted.
- b) If within 15 (fifteen) Days of forwarding the list, the Concessioning Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessioning Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer ordinarily based on the lowest fee quote.
- c) Any objection raised by the Concessionaire shall be considered by the Concessioning Authority and Persons against whom such objections are raised will at the discretion of the Concessioning Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- d) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Date of Award of Concession to [the date of expiry of 6 (six) months from the Date of Commercial Operations]. The scope of work of the Independent Engineer shall be substantially as set out in Appendix 7 of MCA.
- e) On expiry or termination of the aforesaid appointment, the Concessioning Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Appendix 7, and such procedure shall be repeated after expiry of each appointment
- f) Work of certification of Performance Parameters as stipulated in Concession Agreement shall be done by Indian Ports Association during the remaining concession period (During the Operations period). then Independent Engineer shall be selected out of that panel.

- a) The Concessioning Authority shall complete the selection process within a period of 3 months of the date of the Concession Agreement.

18.5.1. Issue of RfP, Evaluation, Award of Work and Monitoring of work

The procedure for issue of RfP, necessary formats/clauses to be included in RfP, submission of RfP, opening, evaluation by TEC and Award of Work to the IE is given in Chapter-15 of this manual. Monitoring of work and the payment to the consultants etc are to be done in accordance with the RfP.

18.6. Environmental Consultants

An environmental consultant provides expertise and guidance on environmental issues to businesses, government agencies, and organizations. These consultants play a significant role in helping clients navigate and comply with environmental regulations, assess and mitigate environmental risks, and develop sustainable practices. Environmental consultants often have backgrounds in environmental science, engineering, or a related field, equipping them with the knowledge to assess the impact of human activities on the environment and recommend strategies for environmental management and conservation.

Environmental consultants work closely with clients to understand their specific needs and objectives, offering tailored solutions to address environmental challenges. Additionally, environmental consultants may assist in obtaining permits, ensuring compliance with regulatory requirements, and providing valuable insights into sustainable practices that align with both environmental conservation goals and business objectives.

18.6.1 Scope of work

Port has to give a detailed scope of work of what the Consultancy firm is required to perform. For ex: Port is seeking the services of qualified firms to obtain Environment Clearance including preparation / conducting Environment Impact Assessment (EIA) studies and other studies etc. in accordance with the Standard Terms of Reference (ToR) specified by MoEF&CC for conducting EIA study and also additional ToR for the project specified by MoEF&CC. The consultant will be responsible for organizing all studies, clearances and investigations including to co-ordinate for obtaining all mandatory clearances from MoEF & CC and SCZMA, Department of Environment & Forests, Govt. of Tamil Nadu etc.

18.6.2. Terms of Reference

The TOR should provide a detailed description of the services which the firm is required to perform.

18.6.3. Issue of RfP, Evaluation, Selection and Award of Work

The procedure for issue of RfP, necessary formats/clauses to be included in RfP, submission of RfP, opening, evaluation by TEC and Award of Work to the consultants is given in Chapter-15 of this manual. Monitoring of work and the payment to the consultants etc are dealt in Chapter-19-21 of this Manual

18.7. Internal Auditors

1. Quality audits of Port income and expenditures, are an important accountability mechanism for ensuring financial integrity. Therefore, Ports have a vital fiduciary responsibility to ensure that their audit is of the highest quality.
2. Auditors typically carry out auditing tasks under well-defined ToR and professional standards.
 - a) The ToR should consider applicable statutory, Port's requirements and applicable auditing and accounting standards.
 - b) Scope of Audit should cover the jurisdiction, Type of audit, contract period and any additional services.
 - c) The Technical qualifications should be based on licensing requirement, general and similar experience, quality certifications, quality and adequacy of staffing, financial capability, auditing approach and scheduling of the auditor.
 - d) Auditors' independence and lack of conflict of interest is also an important requirement.
 - e) A presentation or interview also may be part of the RfP process. A pre-proposal conference may also be considered.
3. The RfP shall contain the following
 - a) General
 - i) Notice Inviting Tender (online or Offline)
 - ii) Introduction about the Port and the Business model
 - iii) Online or Offline Tender procedure
 - iv) Estimated Cost of services
 - v) Broad scope of services
 - vi) Last date of submission of tenders and tentative date of award of work
 - b) Technical Bid
 - i) Terms of Reference

- ii) Detailed Scope of work with various categories of income/expenditure and areas of work for which the port is requiring the services.
- iii) Scope of Audit covering the jurisdiction, Type of audit, and any additional services.
- iv) Contract period/Period of Audit
- v) Periodicity of reporting
- vi) Eligibility Criteria for experience
- vii) Eligibility criterial for Annual Turnover
- viii) Process of selection: Parameters/Criteria and scores allotted
- ix) Audit team & Schedules
- x) EMD/Security Deposit
- xi) Payment Terms
- xii) Formats of Bids
- xiii) Other Terms & Conditions

- c) Financial Bid with format in which the Consultant has to quote
- d) Other formats : Format of Contract Agreement, Confidentiality Agreement etc

4. Evaluation and Award of Contract

The tender of appointment of IA needs to be evaluated based on the tender conditions. Since the tender is floated and going to be monitored by Finance department, it is advisable to have a member from the other department to be a tender evaluation committee member who will look into the tender and evaluation as a third party. The procedure followed for other tenders for evaluation shall be followed in this type of contracts also. The TEC report along with the recommendations of GMF shall be submitted to Competent Authority for approval. The contract may be awarded to the lowest successful firm.

5. Monitoring of Internal Audit contracts

This type of contracts are entered into and also monitored by Finance department. Hence it is advisable that the Head of the Department nominates a coordination officer and the officer to whom the IA team has to submit the reports periodically. The coordinating officer shall make all the records available for the audit team. The monitoring officer shall see that the IA team submits the periodical reports on time and also check for the quality of audit. If necessary suitable instructions shall be given to the IA team to cover the areas which are

left out by the team for a comprehensive report. In case the Monitoring officer finds that the IA team is not so effective or are not capable of doing quality audits, he may report to the GMF or appropriate authorities. The IA consultant form may be requested if need be to replace the team or certain members of the team so that the audits are effective. In case of non-compliance, the contract may be terminated.

6. Payments to the IA Firm

Port shall promptly pay the due amounts periodically as per tender conditions to the IA firm. Delay of payment shall be avoided.

18.8. Inspection / Survey Agencies

18.8.1. Third Party Certification Agency

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

18.8.2. Third party inspection agency

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

18.8.3. Empanelment of Consultants / Third Party Agencies

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

Chapter-19

Monitoring Consultancy services Contract

19.1. Contract Management

19.1.1. The Purpose of Contract Management

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

a) **Contract Execution:**

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

b) **Scope Control:**

- i) Deciding on possible modifications to scope of work and issuing contract variations;

- ii) Monitor that all deliverables are delivered as per contract - reports including draft final report and the final report.
- iii) Quality assurance: Review quality of outcomes at inception phase, mid-term and final phase.
- c) **Time Control:** Monitoring progress and delays in timelines/ milestones of assignment;
- d) **Cost Control:**
 - i) Billing, payment and monitoring the expenditure vis-à-vis progress;
 - ii) Release of final payment and guarantees (if any) and closing the contract;
- e) **Post contract evaluation.**

2. Due to lack of physically/ tangibly measurable outcomes in Services contracts, intense and continuous monitoring of the Contract by the Port is essential for the success of the assignment.

- a) Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the Consultant/ Service provider or to suspend payments till satisfactory progress has not been achieved.
- b) A Contract Monitoring Committee (CMC) shall be formed by the Port to monitor the Contract.
- c) The Port should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power and authority as the nodal person to interact with the consultant/ service provider's team.
- d) A system of reporting may be developed so that a statement covering all ongoing Consultancy/ Service contracts may be submitted within the Department in detail and from each Department in summary form to the Board, so as to enable Management by Exception based on various Risk and Mitigation strategies pointed out at relevant process milestones in this manual. (Rule 195 of GFR 2017).

19.1.2. Costs of Delays in Contract Management Decisions

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

19.1.3. Contract Monitoring Committee – (CMC)

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

19.2. Contract Execution

19.2.1. Issuing Notice to Proceed, Kick-off Meeting and Pre-requisites.

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

- b) Port's counterpart staff (including counterpart project manager) are nominated and are available;
- c) Facilities to be provided by the Port as per the contract are ready for use by the consultant/ service provider;
- d) All parties involved in the assignment (users, security team and other relevant departments) are informed;
- e) All JV members and key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
- f) Guarantees and advance payments, if any, are implemented;
- g) Data and background information are made available; and
- h) All authorisations (if needed) are provided.

19.2.2. Review of Inception Phase:

For more complex consultancies, the work is divided into phases, of which one of the most critical is the inception phase. The inception phase covers the submission and review of the work plan with the Port, and the initiation of the field work. It is common for an inception report to be prepared to cover the consultant/ service provider's experience and observations during this period, and often a workshop or seminar is held to discuss it. This may also be a milestone for payment. Resulting from the factual study of ground situation by the consultants/ service providers, following issues will need resolution at end of the inception phase:

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

19.2.3. Reporting and Monitoring of Progress

1. Monitoring of progress:

- a) The timing, nature, and number of reports that the consultant/ service provider should provide are normally contained in the Consultancy and Non-consultancy services contract.
- b) If the assignment is of a routine nature over a long period (for example, implementation supervision), then monthly, quarterly, and annual progress reports may be required.

- c) On the other hand, if the assignment is to prepare a study or to implement a particular task, a more specific type of reporting may be required.
- d) This could entail, besides the inception report mentioned above, interim or midterm reports, design reports, reports at the end of each phase of the work, a draft final report, and a final report.
- e) These may be provided in a number of media and formats but normally will entail hard and soft copy versions.
- f) The production or acceptance of various reports is often used as a milestone for payments.
- g) CMC should review the reports as they are produced (in final report draft final report is also reviewed), to provide feedback, and to monitor the implementation progress of the assignment.
- h) Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the Competent Authority, so that they can be addressed at the earliest opportunity.

2. Monitoring Physical Outputs/ Outcomes

Especially in consultancy services, progress of deliverables/ outcomes/ outputs has also to be monitored. There should be a stipulation in the contract for large value works (magnitude to be specified), for the Consultant to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

- a) Project information, giving the broad features of the contract.
- b) Introduction, giving a brief scope of the work/ Activity Schedule under the contract.
- c) Progress of assignment through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
- d) Progress chart of the various components of the assignment that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
- e) Plant and machinery statement, indicating those deployed, and their working status.

- f) Man-power statement, indicating individually the names of all the key-staff. Monthly or fortnightly progress review by engineer and Port with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.
- g) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
- h) A statement showing the variations/ change requests submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken, if any, the advances received and adjusted from the department, etc.
- i) Progress photographs/ videography, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work. Use of Geotagging (adding geographical metadata - latitude and longitude coordinates) in photos, videos, reports, may help in monitoring physical progress on the ground. Such information would also be useful later during use of such facilities.
- j) Quality assurance and quality control tests conducted during the month, with the results thereof.
- k) Any hold-up shall be specified.
- l) Dispute, if any, shall also be highlighted.

3. Monitoring a Time-based Contract

As indicated earlier, the performance of a time-based contract may depend on the progress in other contracts (for example, the progress of a construction supervision contract depends on the progress of a construction contract). In such situations, the mobilisation and demobilisation of resources/ key experts and time employed by them should be mobilised and monitored carefully as it is possible that the contract period and the total amount under the contract are spent fully, and construction work being supervised is not even half complete. These situations could lead to claims and disputes.

4. Monitoring a Lump-sum Contract

- a) As Lump-sum contract is based on output and deliverables, it is important that the quality of draft reports is checked carefully before release of stage payment as subsequent dispute after completion of the task could lead to disputes.

- b) In this form of contract, if there are extra/ additional services, there should be timely amendment to the contract to reflect these increases and to regulate payment. In general, in a lump-sum contract, the increase should not be more than 10-15 (ten to fifteen) per cent.

19.2.4. Issuing Contract Amendments/ Variations

- 1. The formal method of making and documenting a change in the Consultancy and Non-consultancy services contract is through a contract variation.
 - a) There are few Consultancy and Non-consultancy services contracts of any type that do not require a contract variation at one time or another.
 - b) Contract variations are issued when there are agreed-upon changes in the scope of work, personnel inputs, costs, timing of the submission of reports, or out-of-pocket expenditures.
 - c) Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation.
 - d) No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. Where it becomes necessary/ inescapable, any modification shall be carried out with the prior approval of the Competent Authority.
- 2. Normally, the request for contract variation is prepared by the consultant/ service provider or Consultancy/ service provider firm and submitted to the Port. However, these can also be initiated by the Port, suo-moto. If the contractor does not raise objections within 14 days to any suo-moto modifications/ amendments made by the Port, it shall be assumed that the contractor has consented to the amendment.
- 3. To take care of any change in the requirement during the contract period of IT Projects as well, there could be situations wherein variations in the scope of work becomes necessary. These situations should be dealt with objectivity and fairness and should not be considered to unduly push the vendor to undertake work or take risks which was not explicitly communicated in the tender document. At the same time the vendor should not consider this as an opportunity to unduly charge the Port due to lack of available options.
 - a) Generally, the value of the change request should not be more than plus/minus 15 (Fifteen) per cent.
 - b) The RfP document should contain detailed mechanism through which such change requests would be carried out.

- c) A 'Change Control Committee' may be constituted by the Port including experts from academics and industry to consider and approve the proposed change requests.
- d) The decisions of this committee (both technical as well as financial) should be considered as final.
- e) Wherever variation is done through such a committee, all the members should sign the minutes of the recommendations.

4. No amendment shall be binding on the Port unless and until the same is written and signed/ authorised by a competent authority.
5. Any amendment to the contract may have, *inter alia*, financial/technical/legal implications. The indentor may be consulted regarding the technical implications. Finance's concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

19.2.5. Obligations Control

Deployment of Resources - Substitution of Named Key Personnel

1. One common type of variation involves a substitution of key personnel identified by name in the contract. Sometimes a change of personnel is unavoidable because of resignation, illness, accident, inadequate performance, or personality conflict. The contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid etc. When personnel are to be replaced, certain factors need to be considered:
 - a) Any replacement should be as well qualified or better qualified than the person being replaced;
 - b) The remuneration should not be more than that was agreed upon for the person being replaced;
 - c) The consultant/ service provider should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).
2. Substitution of key personnel during execution of consultancy contract:
 - a) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.
 - b) The following conditions should be incorporated in tender documents for procurement of consultancy services:
 - i) Substitution of key personnel can be allowed in compelling or unavoidable situations only and the substitute shall be of equivalent

or higher credentials. Such substitution may ordinarily be limited to not more than 50% of total number of key personnel, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the Port.

- ii) Replacement of first key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personnel, from the date of the replacement till completion of contract.
- iii) In case of 2nd replacement, the reduction in remuneration may be equal to (say) 10% (ten percent) and for the third replacement such reduction may be equal to (say) 15% (fifteen percentage).
- iv) In case such numbers/percentages are not relevant, or for some other practical considerations, for a particular contract, the Port may formulate a suitable mechanism with the approval of the competent authority on case-to-case basis, following the above logic, which should be specified in the tender documents.
- v) Public authorities may make use of IT enabled systems at the designated place of deployment to ensure presence of key personnel as for the schedule of deployment.

3. Unsatisfactory Performance by Personnel

- a) Poor performance may involve one or more particular staff from the consultant/ service provider's team, or the whole team or non-participation by the main qualifying JV member.
- b) Based on the provisions of the contract, the Port will advise the consultant/ service provider to take the necessary measures to address the situation.
- c) Poor performance should not be tolerated; therefore, the consultant/ service provider should act quickly to comply with a reasonable request to improve the performance of the team or to replace any particular staff member who is not performing adequately.
- d) If the consultant/ service provider fails to take adequate corrective actions, the Port may take up the issue with the top management of the consultant/ service provider and issue notice to rectify the situation and finally consider terminating the contract.

4. Changes in Constitution/ Financial Stakes

The Contractor must proactively keep the Port informed of any changes in its constitution/ financial stakes/ responsibilities during the execution of the contract,

since that may vitiate the legal basis of the Contract. Where the contractor is a partnership firm, the following restrictions shall apply to changes in the constitution during the execution of the contract:

- a) a new partner shall not be introduced in the firm except with the previous consent in writing of the Port, which shall be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract before the date of such undertaking.
- b) On the death or retirement of any partner of the contractor firm before the complete performance of the contract, the Port may, at his option, terminate the contract for default as per the Contract and avail any or all remedies thereunder.
- c) If the contract is not terminated as provided in Sub-para (b) above notwithstanding the retirement of a partner from the firm, that partner shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under Section 32 of the Partnership Act, has been sent by him to the Port in writing or electronically.

5. Obligation to Maintain Eligibility and Qualification

The contract is awarded to the contractor based on specific eligibility and qualification criteria. The Contractor is contractually bound to maintain such eligibility and qualifications during the execution of the contract. Any change which would vitiate the basis on which the contract was awarded to the contractor should be pro-actively brought to the notice of the Port within 7 days of it coming to the Contractor's knowledge. These changes include but are not restricted to change regarding any declarations in this regard made by it in its bid.

6. 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.

7. No Assignment/ Sub-contracting

- a) 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.
- b) He shall notify the Port in writing all subcontracts awarded under the contract if not already stipulated in the contract, in its original bid or later.

- c) Such notification shall not relieve the contractor from any of its liability or obligation under the terms and conditions of the contract.
- d) Subcontract shall be only for bought out items and incidental Works/ Services.
- e) Subcontracts must comply with and should not circumvent Contractor's compliance with its obligations.
- f) 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.

8. Indemnifying Port regarding Intellectual Property (IPR)

- a) All deliverables, outputs, plans, drawings, specifications, designs, reports, and other documents and software submitted by the contractor under this Contract shall become and remain the property of the Port and subject to laws of copyright and must not be shared with third parties or reproduced, whether in whole or part, without the Port's prior written consent.
- b) 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.
- c) The contractor shall indemnify the Port against any breach of third party's IPR.
- d) The Contractor (and its allied firms) shall maintain confidentiality and secrecy of Port's information provided to it (or that it comes across during execution of Contract).

9. Performance Security:

- a) The Contractor must maintain the Performance Security of the required amount in specified format during the currency of the Contract. In the event of any amendment issued to the contract, the contractor shall furnish suitably amended value and validity of the Performance Security in terms of the amended contract within twenty-eight days of issue of the amendment.
- b) If the contractor during the currency of the Contract fails to maintain the requisite Performance Security, it shall be lawful for the Port at its discretion at its discretion to either terminate the Contract for breach of contract and avail any or all contractual remedies, or without terminating the Contract, recover from the contractor the amount of such security deposit by deducting the amount from the pending bills of the contractor under the

contract or any other contract with the Port or the Government or any person contracting through the Procuring Organisation or otherwise.

- c) The Port shall be entitled, and it shall be lawful on his part, to deduct from the performance securities or to forfeit the said security in whole or in part in the event of:
 - i) any default, or failure or neglect on the part of the contractor in the fulfilment or performance in all respect of the contract under reference or any other contract with the Port or any part thereof;
 - ii) for any loss or damage recoverable from the contractor which the Port may suffer or be put to for reasons of or due to above defaults/ failures/ neglect;
 - iii) and in either of the events aforesaid to call upon the contractor to maintain the said performance security at its original limit by making further deposits, provided further that the Port shall be entitled, and it shall be lawful on his part, to recover any such claim from any sum then due or which at any time after that may become due to the contractor for similar reasons.
- d) The performance security should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. 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.

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

- a) For performance of certain contracts, Port may have to loan stores, drawings, documents, equipment, and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on 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.
- b) 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.

- c) 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.
- d) 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.
- e) Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

19.3. Controlling Scope of Supply and Quantity

19.3.1. Scope of Services

- 1. The Contractor must perform/ delivery Services of the description, scope/ quantum, performance standards and quality outlined in the contract during the contract Period specified therein. The Services shall conform to performance and quality standards as stipulated in the contract or as per the best standards in the market, where not so specified. The Services shall include all incidental works/ Goods and such other work-elements not mentioned explicitly in this Contract, but that can be reasonably inferred from the Contract as being required for attaining Completion of the Services.
- 2. The contractor shall perform the Services and its obligations with all due diligence, efficiency, and economy, observing sound management practices, and employ appropriate advanced technology and safe methods as per the performance standards and quality control parameters stipulated in the contract. For matters where the contract does not specify any Standard, the Services delivered shall conform to National/ International Standards or generally accepted professional techniques and practices.
- 3. In cases where the performance or/and quality of Services is/are found to be unsatisfactory, Port shall, without prejudice to other rights and remedies under the contract, recover as damages for the shortfall in performance, but not as a penalty, 0.5% percent (or any other percentage prescribed) of the delivered price (including elements of GST & freight) of the defective Services, If the contractor

fails to perform the Services as per Performance Standards and Quality, without having to prove actual loss incurred.

19.3.2. Deployment of Resources and Penalty for Absence

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

19.3.3. Quality Control

1. The Port shall check the quality of the Services and shall inspect the contractor's performance according to the Contract. The Port shall promptly notify the contractor of any identified defects, requesting the correction of the notified defect within a reasonable time.
2. If the contractor has not corrected notified defect within the time stipulated in the Port's notice, the Port shall assess the cost of having the defect corrected. Without prejudice to any of its other remedies under this Contract or applicable law, Port shall be legally entitled to deduct such cost from the contract's payments, together with the damages for the shortfall in performance (as per clause below), a sum equivalent to the percentage stipulated in the contract.
3. If the service provider has not corrected a Defect within the time specified in the Port's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in the contract.

4. It has been brought to the notice of Department of Expenditure that in the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials. This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps may be taken to strictly avoid such provisions in the contracts with suppliers/ vendors (Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017).

Chapter-20

Time Control

20.1. Delays

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

20.2. Extension of Delivery

1. If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods/services, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the Port shall examine the proposal and, on approval from the Competent Authority, may agree to extend the delivery /completion schedule, with or without LD and with or without the denial clause, 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/completion; and

- b) That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. 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 Port's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.
- 2. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the Port and supplier). No extension of the delivery/completion 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/completion 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 expiry of the contract delivery/completion period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: "This letter is issued without any prejudice to 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 24.
- 4. When it is decided to extend the delivery/completion 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/completion 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/completion period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery/completion period when granted should only be done in writing.

5. Extension of time may be considered without levy of LD due to execution of excess quantities beyond permissible limits as stipulated in the tender or additional work beyond the scope of work that require additional time for execution with the approval of the Competent Authority.
6. Port may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

20.3. Performance Notice

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

20.4. Denial Clause

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

20.5. Liquidated Damages

Compensation of loss on account of late delivery/completion (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply [Malla Baux Vs. UOI (1970)]. However, it would strengthen Port's rights, if it is established and kept on

record, that inconvenience and loss has been caused due to the delay in supplies, though the loss cannot be exactly quantified, and hence liquidated damages are applicable as a genuine pre-estimate of the loss.

20.5.1. Quantum of LD

1. While granting extension of the delivery/completion period, where the delivery/completion of services or any activity thereof is accepted after expiry of the original delivery/completion period, the Port may recover from the contractor, as liquidated damages for each week of delay or part thereof until actual delivery/completion or performance, but not as a penalty, a sum equivalent to the 0.125% percent (or any other percentage if prescribed) of the related monthly bill of the Services. Besides liquidated damages during such a delay, the denial clause shall also apply. The Port may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.
2. In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. 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/completion period with reservation of the right to LD are granted.
3. Government establishments/Departments, as distinct from PSUs, which execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery/completion and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.
4. Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

20.5.2. Waiver of LD

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

20.5.3. Limit on total Damages.

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

20.6. Force Majeure

1. A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause).
 - a) An FM clause in the contract frees both parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract.
 - b) An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM.
 - c) The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto.
 - d) There may be a FM situation affecting the Port only. In such a situation, the Port is to communicate with the supplier along similar lines as above for further necessary action.
 - e) If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.
2. Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

Chapter-21

Cost Control - Billing and Payments

21.1. Cost Control: Billing and Payments

21.1.1. Payment to Consultants

1. Payment is made to the consultant/ service provider based on a schedule agreed on in contract, often based on certain milestones or outputs. The consultant/ service provider submits an invoice to the Port detailing the expenditures for personnel and out-of-pocket items. The Port then reviews the documentation and forwards it to Paying Authority for ultimate payment. In normal practice, if any item needs further scrutiny before the Port can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.
2. While claiming the payment, the supplier must also certify on the bill that the payment being claimed is strictly in terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.
3. The invoice submitted by the supplier will be verified and signed by the indenting/monitoring officer and pay order form or any other relevant forms will be prepared by the Port and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by the concerned Port Department.
4. The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.
5. Deduction of applicable taxes at source from payments to suppliers will be done as per the existing law in force during the currency of the contract.
6. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions.

7. Before the payment is made, the invoice should be cross-checked with the actual receipt of material or completion of services to ensure that the payment matches the actual performance.
8. **Advance payments:** The terms and conditions of such payments are set out in the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the Consultancy firm. The advance payment is set off by the Port in equal instalments against monthly billing statements until it has been fully set off. Once an advance has been provided, requests for any additional advance are not considered until the consultant/ service provider liquidates the previous advance. The advance payment security is then released. In some contracts there may be provision for mobilization fee to be paid.
9. **Price Variation :**
 - a) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

"It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."
 - b) 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 Port officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.
10. **Final Bill payment:**
 - a) Release of payment and settlement of the final bill should be processed as per the terms and conditions of the contract;
 - b) No payments to consultants by way of compensation or otherwise outside the strict terms of the contract or more than the contract rates should be allowed;

- c) Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' (Annexure-18) may be insisted upon from the supplier to prevent future claims.

11. Delay in payment to the Contractors/Consultants:

- a) Port may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor/consultant.
- b) 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.
- c) In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers.
- d) There should have a system to monitor delays in payments and to identify such unwarranted delays including an online system for monitoring of the bills submitted by contractors/consultants.
- e) Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment.

12. Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed.. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

21.1.2. 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/services to the Port.
- 2. If applicable under relevant tax laws and rules, the Port shall deduct required taxes on account of GST Reverse Charge Mechanism; Tax Deducted at Source (TDS), and Tax Collected at Source (TCS) relating to Income Tax, labour cess, royalty etc from all payments due to the Contractor and deposit these to respective authorities as per the existing law in force during the currency of the contract. In the case of foreign bidders, Corporate tax shall be deducted at source from each invoice as per instructions/orders of the Government of India, Indian Income Tax Authority. As per Government regulations/ directives/ Law Port may be required to deduct Tax Deducted at Source (TDS) or Tax Collected at Source (TCS).

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

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

4. For Port eligible for availing Input Tax Credit:

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

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

21.1.3. Provision of statutory certificates by the Port

Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier/consultants along with payment. As soon as possible, but not later than the date of submission of Tax returns, the Port

must provide the statutory certificates for the taxes deducted to the supplier/consultant, so that he is able to claim set-offs and refunds from the concerned authorities.

21.2. Concluding the Assignment and Post Contract review

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

- a) Achievement of performance standards of material/equipment supplied;
- b) 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 contractor; and
- f) Support during annual maintenance contract (if it was part of the contract) which has ended on _____.

7. Payment Reconciliation: The indenting/materials management Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

- a) LD;
- b) Price reduction enforced on account of shortfall in performance of material/equipment;
- c) Variations/deviations from the scope of the contract;
- d) Overpayments/duplicate payments, if any;
- e) Services availed from Port and vacation thereof such as accommodation, electricity, water, security, transport, cranes, and other machinery, and so on,
- f) Demurrage, insurance premiums or claims, customs duties, and so on;
- g) Material reconciliation;
- h) Price and exchange rate variations;
- i) Statutory duties paid on behalf of the contractor by Port; and
- j) Inspection charges or loss of material in testing.

8. On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released, and its acknowledgement taken from the contractor.

9. On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the Competent Authority. However, Port, at its discretion, may retain important records for future reference.

21.3. Payment against Time Barred Claims

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

21.4. Monitoring of Consultancy Contracts – Risks and Mitigation

Risk-1

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

Mitigation-1

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

Risk-2

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

Mitigation-2

This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, Competent Authority should review justification for extension of the contract. One of the ways to prevent cost overruns in time-based contract is to require Ports acquire contract management capacity to manage consultants contract before contract is signed. It is Port's mandate to

monitor consultant's contracts and also to request consultants to keep producing progress reports and highlighting the status of their contract as it reaches milestones such as 50% and 80% progress. Port must carefully authorise mobilisation and demobilisation of key experts, and examine the time sheets and other reimbursable expenditures.

Risk-3

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

Mitigation-3

Any mobilisation or other advance payments should be interest bearing and should be only for justifiable cases. Terms of such advances should be expressly stated in the NIT/tender documents. The advance payment may be released in not less than two stages depending upon the progress of the contract. Advance should be progressively adjusted against bills cleared for payment. Interest should be charged on delayed recoveries irrespective of the reason stated.

Risk-4

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

Mitigation-4

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

Risk-5

- a) **Supervising agencies/individuals** are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment, and characteristics go unnoticed.
- b) **Contractor's claims** are false or inaccurate and are protected by that in-charge of revising them.
- c) **Payment to the contractor** is delayed intentionally or otherwise.

- d) **Contractor gets final payment**, but contract closure has not been formally done. As a result, material/assets loaned to him are not accounted for.
- e) **Every dispute** lands up in arbitration or court cases since the Port is reluctant to grant compensation for its own lapses to the contractor.

Mitigation

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

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

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

Chapter-22

Disputes and Conflicts

22.1. Disputes

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

"Government departments/ entities/ agencies should avoid and/ or amicably settle as many disputes as possible using mechanisms available in the contract. Decisions should be taken in a pragmatic manner in overall long-term public interest, keeping legal and practical realities in view, without shirking or avoiding responsibility or denying genuine claims of the other party."

4. The aggrieved party shall give a 'Notice of Dispute' indicating the Dispute and claims, citing relevant contractual clauses to the designated authority, and requesting to invoke the following dispute resolution mechanisms. The Dispute shall be attempted to be resolved, as far as feasible, before recourse to courts through dispute resolution mechanisms available in the contract, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.

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

22.2. Excepted Matters

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

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

22.3. Adjudication

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

22.4. Mediation

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

(HLC) for dispute resolution, which may include the following (this composition is purely indicative and not prescriptive):

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

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

4. Appointment of Mediator(s):

- a) Mediators can be of any nationality and must be registered with the Mediation Council of India (MCI) or empanelled by a court-annexed

mediation centre or empanelled by an Authority constituted under the Legal Services Authorities Act, 1987 or empanelled by a mediation service provider (MSP) recognised by MCI.

- b) Within 30 days of receipt of the "Notice of Mediation", the Head of the Procuring Organisation shall propose names of three likely mediators from its panel, asking the other party to choose one as Mediator. The mutually accepted mediator shall then be appointed to conduct mediation.
- c) If parties do not agree on the mediator, they can approach a mediation service provider ("MSP", recognised by MCI), who shall appoint a mediator based on the suitability and preferences of the parties within 7 days.
- d) As brought out in Annex-2 of Annexure 30, in contracts having an Integrity Pact, Independent External Monitors (IEMs) can be appointed as mediators, as per the Standard Operating Procedure (SOP) issued by the Central Vigilance Commission (CVC).
- e) After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.

5. **Venue:** Mediation must be conducted within the territorial jurisdiction of the Court, which has jurisdiction to decide the dispute unless both parties agree to do it online or at any other place.

6. **The Process:**

- a) The Mediator independently and impartially encourages open communication and cooperation between disputing parties to reach an amicable settlement, but he does not have the authority to impose a settlement upon the parties to the dispute. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a resolution of the dispute and that he shall not impose any settlement nor give any assurance that the mediation may result in a settlement.
- b) Unlike court proceedings, Mediation is informal and flexible and allows for creative problem-solving and exploration of various solutions. The Code of Civil Procedure or the Indian Evidence Act (This Act would be replaced by Bhartiya Sakshya 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.

22.5. Arbitration

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

Chapter-23

Termination of Services

23.1. Terminating Services Prior to End of Contract

23.1.1. Breach of Contract

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

23.1.2. Termination of Contract for Default

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

23.1.3. Termination of Contract for Convenience of Port

Determination of Contract for Default/ Convenience of Port or for Frustration of Contract

1. After placement of the contract, there may be an unforeseen situation compelling Port to terminate the contract, in whole or in part for its (the Port's) convenience, by serving written 'Notice for Determination of Contract' on the contractor at any time during the currency of the contract. The notice shall indicate inter-alia, that the termination is for the convenience of the Port or the frustration of the contract

and also the extent to which the contractor's performance under the contract is terminated, and the date with effect from which such termination shall become effective.

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

23.1.4. Frustration of Contract

Upon a supervening cause occurring after the effective date of the contract, including a change in law, beyond the control of either party whether because of the Force Majeure clause or within the scope of section 56 of the Indian Contract Act, 1872, that makes it impossible to perform the contract within a reasonable timeframe, the affected party shall give a 'Notice of Frustration Event' to the other party giving justification. 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 above, due to its frustration, without repercussions on either side.

23.1.5. Limitation of Liabilities

1. Except in cases of criminal negligence or wilful misconduct, the aggregate liability of the contractor to the Port, whether under the contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the contractor to indemnify the Port concerning IPR infringement.
2. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the assignment. This implies a missed opportunity and a waste of the funds already expended on the assignment. For these reasons, termination should be avoided if possible, even if this means a considerable re-staffing of the Consultancy team.
3. Termination may be initiated by any party. Termination must be undertaken within the terms of the contract document. These provide for a notice period of 30 (thirty) days, the payment by the Port of any legitimate outstanding fees and costs to the consultant/ service provider, and the payment of legitimate costs to wind-up the Consultancy/ Non-consultancy service team (unless the termination was occasioned by the default of the consultant/ service provider).
4. The CMC would indicate which of the final billings by the firm are eligible for payment and which are not. In case of dispute over what is or is not a legitimate expense, eligible for payment, the dispute mechanism described above is invoked and, if it is not possible to resolve the matter amicably, the issue is submitted for arbitration. The contract will remain valid until the arbitration decision is made.

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ANNEXURES

Annexure-CSM/1**1 Suggested Structure of SoPP**

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

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

Annexure-CSM/2**2 Format of Procurement Proposal****Procurement Proposal (Concept Paper) for Procurement of Consultancy services**

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

- 1. Purpose/ Objective Statement of Services**
 - a) Description of service:
 - b) Background of the Port and the Project:
 - c) Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity)
- 2. Service Outcome Statement - Outcomes expected from the Procurement of Services:**
 - a) Broad List of Activities/ Steps involved in achieving objectives:
 - b) Expected Time-frame of assignment/ Duration of Engagement:
 - c) Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)
3. Justification for the procurement of Services - Capabilities required for carrying out the assignments:
4. Rough assessment of available in-house capabilities as compared to required capabilities:
5. Precedence and similar assignments carried out earlier in the Port/ similar Ports
6. The eligibility and pre-qualification criteria to be met by the consultants/ service providers:
7. Justification: Based on assessment of required and in-house capabilities;

a) In case of Consultancy Services: It is certified that; the hiring of consultants is justified for following reasons (Tick points applicable). Please also add a narrative justification:

- i) Inadequacy of Capability or Capacity of required expertise in-house; or
- ii) There is internal capacity/ capability to do the job but there are consideration of economy, Speed and efficiency in relation to additional requirement/ commitment/ usage of;
 - 1) Staff/ Management/ Organization;
 - 2) Technological and Material Resources;
 - 3) Money, and
 - 4) Time/ Speed of execution; and
- iii) Also tick one or more of following:
 - 1) The need to have qualified consultant for providing a specialized high-quality service; or/ and Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
 - 2) The need for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement
 - 3) Need to acquire information about/ Identifying and implementing new methods and systems
 - 4) Need for planning and implementing organizational change

8. **In principle approval**

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

Proposing Officer

Signatures/ Name/ Designation/ Department

Comments and Instructions:

Approving Officer

Signatures/ Name/ Designation/ Department

Annexure-CSM/3

3 Terms of Reference Format

1. Description of Assignment
2. About the Port
3. Assignment Background
4. Statement of Purpose/ Objectives
5. Statement of Assignments Outcomes
6. Detailed Scope of Work and Time-lines
7. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones
8. Place of Assignment and Touring Requirements if any
9. Length and Duration of assignments
10. Team Composition and Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the key experts under the Bid data sheet)
11. Capacity Building, Training and Transfer of Knowledge, if any
12. Deliverables, Reporting Requirements and Time Schedule for Deliverables [If no reports are to be submitted, state here “Not applicable.”]
 - a) Format, frequency, and contents of reports; dates of submission
 - b) Number of copies, and requirements for electronic submission (or on computer media)
 - c) Persons (indicate names, titles, submission address) to receive them;
13. Background material, Data, reports, records of previous surveys, and so on, to be provided to the consultant (Mention a caveat about reliability of material provided and need for the consultant to verify and crosscheck vital aspects)
14. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Port (Specifically mention, what facility/ utilities would not be provided and also, charges if any for facilities offered)
15. Institutional and organisational arrangement
 - a) Counterpart Project Manager and Team
 - b) Consultancy Management Committee
 - c) Chain of Command for reporting
 - d) Procedure for review of the work of consultant after award of contract

Annexure-CSM/4

4 Bid Opening Attendance Sheet cum Report

KAMARAJAR PORT LIMITED

Bid (Techno-commercial/ Financial) Opening Attendance Sheet

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

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

Signature of the Authorized representative of the Port

Bid Opening Report

Tender No. _____ Title _____

Date of Opening _____ Total Number of tenders received _____

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

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

Annexure-CSM/5**5 TEC Committee Minutes/Report Format**

(For EoI/ Techno-Commercial/Financial Bids)

KAMARAJAR PORT LIMITED

Tender No. _____ Title _____

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

Estimated cost _____ Bid Validity _____

Tender Opening date _____ Total Number of tenders received _____

Method of selection: LCS/QCBS/SSS

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

Past Precedents/Procurements

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

Members of the Tender Evaluation Committee:

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

I. Background of the Assignment

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

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

II. Preliminary Evaluation of Responsiveness

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

III. Evaluation of Responsive Bids: Technical Evaluation

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

- ii) Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest).
- f) Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations.
- g) **Technical Evaluation Report should also contain** (Formats given in Annexure 7 to 11)
 - i) Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in RfP)
 - ii) Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified)
 - iii) Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified)
 - iv) Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)

IV. Evaluation of Technically Successful Bids: Financial Evaluation

- a) Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA
- b) Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the standard RfP and compliance of evaluation with RfP.
- c) Insert a summary table of evaluated financial scores/ combined weighted scores
- d) Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based (Quality-based), Selection-based on Qualifications (Qualifications), and Single-source Selection (Single-

Source)); arithmetical correction in case of Time-based Contract, tax-related problems; award recommendation; and any other important information.

- e) Attach Minutes of Public Opening of Financial Proposals

V. Summary of Recommendations

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

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

Signature Name and Designation of the Members

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

Remarks by the Accepting Authority:

Signature

Name & Designation of Accepting Authority

Date of Acceptance:

Annexure-CSM/6**6 Format for evaluation of Responsiveness**

Name of the consultancy firm: _____

Sr. No.	Item	Required response
1	Has the consultant paid the RfP document fees?	Yes
2	Has the consultant submitted the requisite bid processing fee and bid security?	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed?	Yes
4	Has the power of attorney been submitted in the name of authorized representative?	Yes
5	In the case of JV/consortium, whether the MoU has been submitted?	Yes
6	Has the consultant submitted all the required forms of the technical proposal?	Yes
7	Technical proposal does not contain any financial information?	Yes
8	Is financial proposal submitted separately in a sealed cover?	Yes

Annexure-CSM/7**7 Format for Simplified evaluation of quality (LCS/ EoI)**

(If so specified in Bid Documents)

Sr. No.	Item	Required response
1	Does the consultancy firm have the required experience?	Yes
2	Does the proposed methodology of work fulfil the objectives of the assignment/ job till the last detail of the ToR?	Yes
3	Do the methodology, work plan and staffing schedule provide coverage of the entire scope of work as described in ToR?	Yes
4	Does the team leader fulfil the minimum educational qualification and experience criteria?	Yes
5	Has the consultant provided for all the professionals for requisite expertise?	Yes
6	Does the key professional (indicate the position) fulfil the minimum educational qualification and experience criteria? [Evaluate for all the proposed key personnel]	Yes
7	Does the staffing schedule including the key professionals proposed, the responsibility assigned to them and the support staff together is adequate for performing the entire scope of work indicated in the ToR?	Yes

Note: If the answer is yes, in all the cases, the consultancy firm is considered technically qualified for the assignment.

Annexure-CSM/8

8 Format for Detailed Technical evaluation - Summary Sheet

S.No.	Name of the consultant	Firm's Experience Marks Awarded	Methodology & Work schedule Marks Awarded	Qualifications of Key Professionals Marks Awarded	Total Marks. Awarded	Ranking of Technical Marks
		Max. Marks =	Max. Marks =	Max. Marks =	Max. Marks 100	

Annexure-CSM/9

9 Evaluation of Consultancy Firm's Experience

(Averaged from individual worksheets of TEC members)

Sr.No.	Name of the Consultancy	Firm Number of Projects of similar nature	Marks Awarded
			Max. Marks =

Annexure-CSM/10

10 Evaluation of Methodology & Work Schedule

(Averaged from individual worksheets of TEC members)

S.No.	Name of the Consultancy	Firm's Understanding of ToR – Marks Awarded	Work Plan & Methodology – Marks Awarded	Organization and Staffing for the proposed assignment – Marks Awarded	Total – Marks Awarded
		Max. Marks =	Max. Marks =	Max. Marks =	Max Marks =

Annexure-CSM/11**11 Evaluation of the Key Professionals**

(Averaged from individual worksheets of TEC members)

Name of the Consultancy Firm:			Marks Awarded	No. Projects of similar nature	Marks Awarded	Experience of the region (No. of Projects in the region)	Marks Awarded	Total Marks (4+6+8)
Sr. No.	Name of the Key Professionals	Educational Qualification						
1	2	3	4	5	6	7	8	9
Grand Total for the consultant:								
Name of the Consultancy Firm:			Marks Awarded	No. Projects of similar nature	Marks Awarded	Experience of the region (No. of Projects in the region)	Marks Awarded	Total Marks (4+6+8)
Grand Total for the consultant:								
Name of the Consultancy Firm:			Marks Awarded	No. Projects of similar nature	Marks Awarded	Experience of the region (No. of Projects in the region)	Marks Awarded	Total Marks (4+6+8)
Grand Total for the consultant:								

Annexure-CSM/12**12 Example of Formula for Price Variation Clause**

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

The formula for price variation will thus be:-

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

Where: -

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

Po is the contract price on the base date (which is taken as the date on which tender is due to open).

F is the fixed element (as the percentage of the total price) not subject to price variation.

a is the assigned percentage to the material element in the contract price.

b is the assigned percentage to the labour element in the contract price.

(F, a and b being percentages should total 100)

Lo and L1 are the average wage indices for the quarter before the quarter in which base month falls and for the quarter before the quarter in which date of supply falls; respectively. For example for a tender opening on March 1, 2024 (base date), Lo would be average wage index for the quarter of Oct-Dec 2023.

Mo and M1 are the material prices/indices as average of the month, two month prior to the month in which base month falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender opening on March 1, 2024 (base date), Mo would be prices/index as average of the month of January 2024. All material prices/indices will be basic prices without excise duty and without any other central, state, local taxes and duties and Octroi.

If more than one major item of material is involved, the material element can be broken up into two or three components such as Mx, My, Mz.

The following conditions would be applicable to price adjustment:

There is a Time-lag period between the date of supply/ base date respectively and the dates on which indices/ prices are to be considered as per above formula. This time lag can be a few months/ weeks prior to such base date/ date of supply, depending on the frequency of publishing/ availability of indices/ prices and the supply chain process of manufacturing. This must be specified in the definitions of L0/ L1 and M0/M1 indices in the formula in the tender document as above.

Base date shall be assumed to be the date of last deadline of submission of bids.

No price increase is allowed beyond original delivery period.

No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.

No price adjustment shall be payable if this is less than or equal to 2% (two percent) of Po.

Total adjustment will be subject to maximum ceiling of ____ % (to be specified in tender document), beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of contract.

Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.

In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M_1}{M_0}\right)$ and $\left(\frac{L_1}{L_0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E_0}{E_1}\right)$, where E0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E0 is Number of Rs. in a \$ on base date and E1 is the exchange rate on determination date.

Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

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

Annexure-CSM/13

¹³ Model Clause/ Certificate to be inserted in tenders

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

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

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The beneficial owner for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation—

- a. “Controlling ownership interest” means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;
- b. “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.

Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

“I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered.

Model Certificate for Tenders

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

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

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

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfils all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure-CSM/14

¹⁴ Draft Integrity Pact

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

GENERAL

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

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

AND

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

Preamble

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

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

NOW, THEREFORE,

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

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

Enabling BIDDERs / CONTRACTORs to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also

abstain from bribing and other corrupt practices and the PRINCIPAL/EMPLOYER will commit to prevent corruption, in any form, by its officials by following transparent procedures.

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

Commitments of the PRINCIPAL/EMPLOYER

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

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

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

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

Commitments of the BIDDER / CONTRACTOR

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

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

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

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

Previous Transgression

The Bidder / Contractor declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country

in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India that could justify Bidder / Contractor's exclusion from the tender process. If the Bidder / Contractor makes incorrect statement on this subject, the Bidder / Contractor can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

Sanction for Violations

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

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

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

Fall Clause

The BIDDER / CONTRACTOR undertakes that it has not supplied / is not supplying similar product / systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry / Department of the Govt. of India or PSU and if it is found at any stage that similar product / systems or subsystems was supplied by the BIDDER / CONTRACTOR to the Principal at a lower price, then that very price, with due allowance for

elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER / CONTRACTOR to the PRINCIPAL / EMPLOYER, if the contract has already been concluded.

Independent Monitors

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

1. Name & Particulars

2 Name & Particulars

- (a) The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- (b) The Monitors shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- (c) Both the parties accept that the Monitors have the right to access all the documents relating to the project / procurement, including minutes of meetings.
- (d) As soon as the Monitor notices, or has reason to believe, a violation of this pact, he will so inform the authority designated by the Principal and the Chief Vigilance Officer of Kamarajar Port Limited.
- (e) The BIDDER / CONTRACTOR(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the PRINCIPAL including that provided by the BIDDER / CONTRACTOR. The BIDDER / CONTRACTOR will also grant the Monitor, upon his request and demonstration of a valid interest unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the Bidder / Contractor / Subcontractor(s) with confidentiality.
- (f) The Principal / Employer will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor, the option to participate in such meetings.
- (g) The Monitor will submit a written report to the designated Authority of Principal / Employer / Chief Vigilance Officer of Kamarajar Port Limited within 8 to 10 weeks from the date of reference or intimation to him by the Principal / Employer / Bidder / Contractor and should the occasion arise, submit proposals for correcting problematic situation.
- (h) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the

Management to discontinue or to take corrective action, or to take other relevant action. The Monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

- (i) If the Monitor has reported to the Principal substantiated suspicion of an offence under the Indian Penal Code, 1860 / Prevention of Corruption Act, 1988 and the Principal / Employer has not, within reasonable time, taken visible action to proceed against such offence or reported to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner, Government of India.
- (j) The word 'Monitor' would include both singular and plural.

Facilitation of Investigation

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

Other Provisions

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

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

Law and Place of Jurisdiction

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

Other Legal Actions

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

Validity

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

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

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

Equal treatment of all Bidders / Contractors /Sub-Contractors

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

The parties hereby sign this Integrity Pact at _____ on _____.

The Principal represented
by the CMD, Kamarajar Port Limited

BIDDER / CONTRACTOR

Name of the Officer
Designation

Name
Designation

Witness 1
Name & address

Witness 1
Name & address

Witness 2
Name & address

Witness 2
Name & address

Place:

Place:

Date:

Date:

Annexure-CSM/15

15 Integrity Pact - Guidelines for Indian Agents of Foreign Suppliers

The following further Guidelines are to be followed in case of Indian Agents of Foreign suppliers: This shall be the Annexure to the Integrity Pact

- 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.

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.

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.

Annexure-CSM/16

¹⁶ Integrity Pact – Appointment and Role of IEMs

1. Appointment of IEMs

- i) Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs) nominated by CVC at the Port's from its list of empanelled IEMs. Three IEMs shall be appointed for Maharatna and Navratna PSUs, and two IEMs shall be nominated in all other organisations.
- ii) The IEMs appointed should be eminent persons of high integrity and reputation. A periodical notice inviting applications from eligible persons shall be published on the CVC's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate, the name(s) would be included in the panel for nomination as IEM.
- iii) The zone of consideration of eminent persons for empanelment as IEMs would consist of:
 - a) Officers who have held the post of Additional Secretary to Govt of India or were in the equivalent or higher pay scale at the time of retirement (whether serving with Govt of India or any State Govt.).
 - b) Persons who held the CMD post of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt of India at retirement.
 - c) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies, and other Financial Institutions at retirement.
 - d) Chief Executive Officer of an organisation (other than listed above and were equivalent or higher to Additional Secretary to Govt, of India, at the time of retirement).
 - e) Armed Forces Officers in the pay scale equivalent or higher to Additional Secretaries to Govt of India at retirement.
 - f) The age of IEM should not be more than 70 years at the time of appointment.
 - g) If a retired person has accepted a full-time assignment, post-retirement, either in the government sector, private sector, or elsewhere, he shall not be eligible to be on the panel of IEMs. All those empanelled persons who accept full-time assignments elsewhere would cease to remain on the panel

from the date they have taken the assignment. In this regard, it would be incumbent upon the empanelled persons to immediately inform CVC about the acceptance of full-time assignment by them.

- h) All IEMs should sign non-disclosure agreements with the organisation in which they are appointed.
- i) A person acting as an IEM shall not be debarred from taking up other assignments, such as consultancy with other organisations or agencies, subject to his declaring that their additional assignment does not involve any conflict of interest and is not a full-time assignment. The IEMs must also sign a declaration of absence of conflict of interest with existing assignments. In case of any conflict of interest arising later from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse themselves from that case.
- j) A person may be appointed as an IEM in a maximum of three Organisations at a time. An empanelled person cannot be appointed in one organization for over three years.

2. Role of IEMs in Integrity Pact

- i) Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of fair play in modes of procurement and tendering systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.
- ii) The entire panel of IEMs should examine the matter jointly, who would investigate the records, conduct an examination, and submit their joint recommendations to the Management of the Procuring Entity. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.
- iii) The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the Integrity Pact.
- iv) IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the

complaints in any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

3. Systemic Improvements:

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

4. Dispute Mediation:

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both parties shall equally share the fees/expenses on dispute resolution. If the dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

5. Entitlements of IEMs

- i) IEMs shall be paid fees of ₹ 25,000/- per sitting subject to a maximum of ₹ 3,00,000/- in a calendar year for the sitting fees.

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

Annexure-CSM/17

17 Letter of Award of Contract

(On Port Letterhead)

KPL/____/____/20____/

date _____

Letter of Award of Contract

Confidential

To

Sub: Tender Award of contract for contract no: ----- for the contract of -----
Ref: Your offer no. ----- against our tender no. ----- opened on -----

Dear Sir/ Madam

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

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

You are requested to execute necessary agreement within seven days from the date of issue of this letter in the enclosed agreement form. Special adhesive stamp of Rs. ----- shall be affixed on the enclosed agreement form. This notification concludes the legally binding contract between you and the Kamarajar Port Limited, till issue of a formal contract.

Yours truly,

[Authorised Officer]

Annexure-CSM/18

18 No Claim Certificate

(On Contractor Letterhead)

To,
(Contract Executing Officer)
Kamarajar Port Limited

Sub: No Claim Certificate

Ref : Contract Agreement no. -----dated -----for Construction of -----

Dear sir

With reference to the above referred contract, we have received the sum of Rs. _____ (Rupees _____ only) in full and final settlement of all the payments due to us for the supply / Construction of _____ under the above-mentioned contract agreement, between us and KPL. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against the KPL, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

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

Annexure-CSM/19

19 Application for Approval of GTE of Less than Rs.200 Crores

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

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

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

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

Table-1

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

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

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

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

Stamp and Signature of the

Authorized officer of the proposing Department

Name

Designation

Contact Number

Email ID

Table-2

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

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

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SECTION-2

APPENDICES TO CONSULTANCY SERVICES MANUAL

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Appendix-CSM-S2/A1

1 Fundamental Principles of Public Procurement

1.0 Fundamental Principles of Public Procurement

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

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

1.1. Transparency Principle

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

1.2. Professionalism Principle

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and

integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP). They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, the Port may prescribe professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

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

"Rule 144. Fundamental principles of public buying: Fundamental principles of public buying. (for all procurements including procurement of works). — Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks: -

- a) *The description of the subject matter of procurement to the extent practicable should*
 - 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;
 - 2. not indicate a requirement for a particular trade mark, trade name or brand.
- b) *The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.*
- c) *Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such*

standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification.

- d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;*
- e) Offers should be invited following a fair, transparent and reasonable procedure;*
- f) The Procuring Entity should be satisfied that the selected offer adequately meets the requirement in all respects;*
- g) The Procuring Entity should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;*
- h) At each stage of procurement, the concerned Procuring Entity must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.*
- i) A complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.*
- j) Ports shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on their website”*
- k) [Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; **no procurement shall be made in violation of such restrictions.**] (Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020).*

1.3. Broader Obligations Principle

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

- a) Preferential procurement from backward regions, weaker sections and Micro and Small Enterprises (MSEs), locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; and*

- b) Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c) Support to broader social policy and programme objectives of the government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');
- d) Facilitating administrative goals of other departments of government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People with Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').
- e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure amended Rule 144 of GFR, 2017 and introduced a subpoint (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1) (Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020) which are as follows:

1.3.1. Requirement of registration

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority.
- b) The Order shall not apply to (i) cases where orders have been placed or contract has been concluded or letter/notice of award/ acceptance (LoA) has been issued on or before the date of the order (23rd July 2020);

1.3.2. Transitional cases

Tenders where no contract has been concluded or no LoA has been issued so far shall be handled in the following manner: -

- a) In tenders which are yet to be opened, or where evaluation of technical bid or the first exclusionary qualificatory stage (i.e. the first stage at which the qualifications of tenderers are evaluated and unqualified bidders are excluded) has not been completed: No contracts shall be placed on bidders from such countries. Tenders received from bidders from such countries shall be dealt with as if they are

noncompliant with the tender conditions and the tender shall be processed accordingly.

- b) If the tendering process has crossed the first exclusionary qualificatory stage, if the qualified bidders include bidders from such countries, the entire process shall be scrapped and initiated *de novo*. The *de novo* process shall adhere to the conditions prescribed in the Order.
- c) As far as practicable, and in cases of doubt about whether a bidder falls under paragraph (1) above, a certificate shall be obtained from the bidder whose bid is proposed to be considered or accepted.

1.3.3. Incorporation in tender conditions

In tenders to be issued after the date (23rd July 2020) of the order, the provisions of paragraph (1) above and of other relevant provisions of the Order shall be incorporated in the tender conditions.

1.3.4. Applicability

- a) Apart from Ministries/Departments, attached and subordinate bodies, notwithstanding anything contained in Rule 1 of the GFRs 2017, the Order shall also be applicable to all Autonomous Bodies;
- b) to public sector banks and public sector financial institutions; and
- c) subject to any orders of the Department of Public Enterprises, to all Central Public Sector Enterprises; and
- d) to procurement in Public Private Partnership projects receiving financial support from the Government or public sector enterprises/ undertakings.
- e) Union Territories, National Capital Territory of Delhi and all agencies/ undertakings thereof

1.3.5. Definitions

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

- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Bidder from a country which shares a land border with India" for the purpose of the Order means
 - i) An entity incorporated, established or registered in such a country; or
 - ii) A subsidiary of an entity incorporated, established or registered in such a country; or
 - iii) An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - iv) An entity whose beneficial owner is situated in such a country; or
 - v) An Indian (or other) agent of such an entity; or
 - vi) A natural person who is a citizen of such a country; or
 - vii) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- d) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

1.3.6. Beneficial owner for the purposes of point (c) (iv) will be as under:

- a) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means. Explanation:-
- b) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- c) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- d) Where no natural person is identified under (1.3.6) (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- e) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

1.3.7. Sub-contracting in works contracts

In works contracts, including turnkey contracts, contractors shall not be allowed to subcontract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph (1.3.5) (c) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

1.3.8. Certificate regarding compliance

A certificate shall be taken from bidders in the tender documents regarding their compliance with the Order. If such certificate given by a bidder whose bid is accepted is found to be false, this would be a ground for immediate termination and further legal action in accordance with law.

1.3.9. Validity of registration

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

1.3.10. Government e-Marketplace

The Government E-Marketplace shall, as soon as possible, require all vendors/ bidders registered with GeM to give a certificate regarding compliance with the Order, and after the date fixed by it, shall remove non-compliant entities from GeM unless/ until they are registered in accordance with this Order.

1.3.11. Model Clauses/ Certificates

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc. without making any reference to Department of Expenditure.

1.3.12. Competent Authority and Procedure for Registration

- a) The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT).

- b) The Registration Committee shall have the following members
 - i) An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii) Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii) Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c) DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- d) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- e) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- f) Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.
- j) In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- k) Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

1.3.13. Special Cases [In reference to para (1) (b) above]

- a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.
- b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.
- c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.
- e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.
- f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting". However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.

g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.

1.3.14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020

- a) For the purpose of (2)(b) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
- b) If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process *de novo*.
- c) The following examples are given to assist in implementation of the Order
 - i. Example I: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 - ii) Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
 - iii) Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
 - iv) Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

1.4. Extended Legal Responsibilities Principle

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on.

1.5. Public Accountability Principle

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on – in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The Procuring Entity, at each stage of procurement, must therefore, place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall Therefore, maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a) documents pertaining to determination of need for procurement;
- b) description of the subject matter of the procurement;
- c) Statement of the justification for choice of a procurement method other than open competitive bidding;
- d) Documents relating to pre-qualification and enlistment of bidders, if applicable;

- e) Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) Bids evaluated, and documents relating to their evaluation;
- h) Contracts and Contract Amendment; and Complaint handling, correspondences with Procuring Entities, consultants, banks.

Appendix-CSM-S2/A2**2 Preference to Make in India****Procurement Preference to Make in India-Rule 153 (iii) of GFR, 2017**

1. To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department for Promotion of Industry, and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works, and Services. For the purpose of this Order: -

- a) 'L1' means the lowest tender or lowest bid, or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b) 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
- c) 'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
- d) 'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- e) 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

2. **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

- a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-

local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para 2-a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.

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

3. Purchase Preference

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para 2-b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - i) Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - ii) If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- iii) In the procurements of goods or works, which are covered by para 2-b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - iv) Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 - v) If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 - vi) In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 - vii) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.
- c) **Applicability in tenders where contract is to be awarded to multiple bidders:** In tenders where contract is awarded to multiple bidders subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - i) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
 - ii) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
 - iii) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be

awarded to all the qualified bidders as per award criteria stipulated in the bid documents.

- iv) However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.
- v) Only those 'Class-I local supplier' would be eligible for purchase preference whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. First purchase preference must be given to the lowest quoting eligible 'Class-I local supplier'. If the lowest quoting 'Class-I local supplier,' does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher eligible 'Class-I local supplier,' and so on. In case quantity thus allocated to eligible 'Class-I local suppliers' is short of 50% of the tendered quantity, then this shortfall quantity may be distributed among all other qualified bidders as per award criteria stipulated in the tender documents.
- vi) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.

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

5. Minimum local content: The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local

content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

6. Requirement for specification in advance: The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

7. Government E-marketplace: In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

8. Verification of local content:

- a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e) Nodal Ministries and procuring entities may prescribe fees for such complaints.

- f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g) The Department of Expenditure shall issue suitable instructions (please refer to para 3.6 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 lists of such suppliers with the period of debarment is maintained and displayed on website(s);
 - iii) in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.
 - iv) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed above.

9. Specifications in Tenders and other procurement solicitations:

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.

- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (a) and (b) above.
- d) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.

10. Reciprocity Clause

- a) When a Nodal Ministry/Department **identifies** that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies **under their administrative control and GeM** for appropriate reciprocal action.
- b) **Entities of countries which have been identified by the nodal Ministry/Department** as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
- c) The stipulation in (b) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
- 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 Policy of DPIIT as amended from time to time.

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

- a) In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any

entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

- b) "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website."

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/PSUs, for the next 5 years on their respective website."
- b) The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- c) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.

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 procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian

company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

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-in-charge, may by written order, for reasons to be recorded in writing,
 - i) reduce the minimum local content below the prescribed level; or
 - ii) reduce the margin of purchase preference below 20 (twenty) percent; or
 - iii) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.
- b) A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

15. Directions to Government companies: In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

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-Member
 - iv) Joint Secretary (Public Procurement), Department of Expenditure-Member
 - v) Joint Secretary (DPIIT)-Member-Convenor
- b) The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

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

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

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 to conform to this Order, within two months of the issue of this Order.

20. Transitional provision: The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

Appendix-CSM-S2/A3

3 Restrictions on Entities from a Class of Countries

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

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

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

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

- a) Any bidder from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The information on Competent Authority is given in sub-para 10 below.
- b) Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in para 10 below.
- c) The requirement of registration for cases covered by para (a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by para (b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.
- d) In tenders issued after 23.07.2020 or 01.04.2023, as the case may be, the provisions of requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.

3. Applicability

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

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

4. Definitions

- a) "Bidder" for the purpose of the Order (including the term 'bidder', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an

association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.

- b) "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c) "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)
- d) "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in sub-para 4 below, occurring on or after 23.07.2020.
- e) "Bidder (or entity) from a country which shares a land border with India" for the purpose of the Order means:
 - i) An entity incorporated, established, or registered in such a country; or
 - ii) A subsidiary of an entity incorporated, established, or registered in such a country; or
 - iii) An entity substantially controlled through entities incorporated, established, or registered in such a country; or
 - iv) An entity whose beneficial owner is situated in such a country; or
 - v) An Indian (or other) agent of such an entity; or
 - vi) A natural person who is a citizen of such a country; or
 - vii) A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- f) "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.

Note

- i) A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.

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

Explanation: -

- 1) "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
- 2) "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- 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) For determining nationality while assessing the beneficial ownership of the bidder, the nationality as mentioned in the Passport of the beneficiary owner should be considered. In case of the possibility of dual citizenship, nationality on all the passports should be considered, through a suitable declaration. If, nationality in any of the passports of the person, whose beneficial ownership is being assessed, is recorded to be from a country sharing land border with India, the provisions contained under this Order shall apply.

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

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

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

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

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

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

7	Mining and extraction (including deep sea projects)
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

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

- b) For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country which shares a land border with India shall require registration.
- c) For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country which shares a land border with India shall require registration.
- d) In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included

in Schedule III. The Ministry/ Department concerned shall intimate the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to intimate the decision to DPIIT/ NSCS. If any point is raised by DPIIT/ NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.

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

6. Sub-contracting in works contracts

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

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

7. Model Clauses/ Certificate regarding compliance

An undertaking shall be taken from bidders that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such certificate given by a bidder whose bid accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law. Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-18. While adhering to the substance of the Order, procuring entities are free to appropriately modify the wording of these clauses based on their past experience, local needs etc.

8. Validity of registration

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly

registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

9. **Government e-Marketplace**

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

10. **Competent Authority and Procedure for Registration**

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

- e) The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such application by them.
- f) The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- g) Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in sub-para 3 above, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.
- h) The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- i) For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

11. Special Cases [In reference to para 2-b) above]

- a) Bona fide procurements made through GeM without knowing the country of the bidder till the date fixed by GeM for this purpose, shall not be invalidated by the Order.
- b) Bona fide small procurements, made without knowing the country of the bidder, shall not be invalidated by the Order.
- c) In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in the Order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
- d) The Order shall not apply to procurement by Indian missions and by offices of government agencies/ undertakings located outside India.

- e) The Order will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.
- f) A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting." However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.
- g) Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.

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

- a) The proprietary purchases are not excluded from the provisions of the Rule 144 (xi) of GFR, 2017.
- b) The rule is applicable on all the purchases irrespective of the order value.
- c) The provisions of Rule 144 (xi) are not applicable in case of selling of raw materials by a Government agency (like a CPSE/ Autonomous Bodies etc.).
- d) The provisions of Rule 144 (xi) are not applicable on the export to the countries sharing land border with India.
- e) Sub-contracting is not permitted to any contractor from a country sharing land border with India, unless registered with the competent authority. However, it is to be noted that procurement of raw material, components, etc. does not constitute sub-contracting. In case, a bidder has proposed to supply finished goods, procured directly/ indirectly from the vendors from the countries which shares land border with India, such vendor will be required to be registered with the Competent Authority as per the provisions of Rule 144 (xi) of GFR, 2017.

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

S. No	Scenario	Applicability of Rule 144 (xi)
a)	The equipment/ goods have been purchased or will be purchased from company (manufacturer) from country which shares a land border with India	The bidder has procured certain goods to offer the requisite services to a procuring entity. In such case, the bidder does not fall within the 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, <i>prima facie</i> , 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, <i>prima facie</i> , shall be 'X.' Status of 'X' in this case does not attract the provisions of Rule 144 (xi).

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

i) A vendor say, 'Party A' from India, is procuring an item from their sister company say, 'Party B,' which is registered in a country not sharing land border with India. Both the parties, Party A and B are owned by an entity say, 'Party C.' Party C does not belong to a country sharing land border with India. However, Party B has its production facility in a Country sharing land border with India, and the manufactured item will be procured by Party A from its sister concern i.e., Party B from the above-mentioned production facility. The production unit is wholly owned by Party B. The Party A now claims that the provisions of Rule 144 (xi) of GFR 2017 do not apply on it because both the Party A and B are not:

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

land border with India as the item is being manufactured in their own production units.

With the above facts put into light and the claims put forth by Party A, it is to bring to the clarity to the procurers, that Party A requires to get itself registered with the competent authority as per the provisions of Rule 144 (xi) of GFR 2017, since the procured item is a finished product, that is being procured by Party A from its sister organization Party B from the manufacturing unit situated in the country sharing land border with India.

ii) Taking an example of IT goods and services:

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

Appendix-CSM-S2/A4**4 Code of Integrity for Public Procurement (CIPP)****Code of Integrity for Public Procurement (CIPP)**

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

- a) Code of Integrity for Public Procurement: Procuring authorities as well as bidders, suppliers, contractors, and consultants/ service providers should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts;
- b) “Corrupt practice”: making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- c) “Fraudulent practice”: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained, or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- d) “Anti-competitive practice”: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency,

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

- e) "Coercive practice": harming or threatening to harm, persons, or their property to influence their participation in the procurement process or affect the execution of a contract;
- f) "Conflict of interest": participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of Procuring Entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
- g) "Obstructive practice": materially impede the Procuring Entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity's rights of audit or access to information;

2. Obligations for Proactive Disclosures

- a) Procuring authorities (Please refer to example in para 3.10-5 for clarification of Col relating to personnel of procuring Entity) as well as bidders, suppliers, contractors, and consultants/ service providers, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b) All bidder must be asked in the Tender document to declare any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;

- c) The Contractor/Consultant must disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of the Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee in a format given in the Tender Document.
- d) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Procuring Entity. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

3. Conflict of Interest in case of consultants

- a) **Professionalism:** The consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity's interests paramount above his/its own corporate interests and above any consideration for future work, strictly avoiding any conflicts of interest.
- b) **CIPP and Conflict of Interest:** All bidders shall have to abide by the Code of Integrity in Public Procurement detailed in the Tender Document, including Conflict of Interest. Without limitation on the generality of the foregoing, and unless stated otherwise in the RfP document, the consultant shall not be hired under the circumstances set forth in following sub-paras:
- c) **Conflicting activities/ assignments:** Consultants (including its experts and subconsultants) or its allied firm (For definition of allied firm please refer to 'Procurement Glossary' section) shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant or its allied firm for the same or for another Procuring Entity. A firm or its allied firms that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services. Conversely, a firm or its allied firms hired to provide consultancy services for the preparation or implementation of a project, or any of its affiliates, shall be disqualified from subsequently providing goods or works or non-

consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;

- d) **Conflicting Bidding:** A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. All bidders found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this tender process, if:
 - i) A firm shall submit only one proposal, either individually or as a JV partner in another proposal. If a firm, including a JV partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a non-bidder firm from participating as a sub-consultant or an individual consultant to participate as a team member in more than one proposal when circumstances justify but only if permitted by the RfP document.
 - ii) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - iii) receives or have received any direct or indirect subsidy/ financial stake from another bidder; or
 - iv) has the same legal representative/ agent as another bidder for purposes of this bid.
 - v) A Principal can authorize only one agent, and an agent also should not represent or quote on behalf of more than one Principal; or
 - vi) has a relationship with another bidder, directly or through common third parties, which puts it in a position to have access to information about or influence the bid of another Bidder or influence the decisions of the Procuring Entity regarding this Tender process; or
 - vii) In case of a holding company having more than one independent units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related allied firms. Bidders must proactively declare such allied/ common business/ management units in same/ similar line of business.
- e) **Conflicting relationships:** A consultant (including its/his experts and sub-consultants) that has a close business or family relationship (Please refer to

example in para 3.10-5 for clarification) with a professional staff of the Procuring Entity who are directly or indirectly involved in any part of: (i) the preparation of ToR for the assignment; (ii) selection process for the contract; or (iii) supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the client throughout the selection process and execution of the contract.

4. Unfair Competitive Advantage in case of consultants

Fairness and transparency in the selection process require that the consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consultancy services related to the assignment in question. Such unfair competitive advantage is best avoided by full transparency and by providing equal opportunity so that all firms or individuals interested or involved have full information about a service assignment and its nature, scope, and background information. To that end, the request for proposals and all information would be made available to all short-listed consultants simultaneously.

5. Punitive Provisions:

Without prejudice to and in addition to the rights of the Procuring Entity to other penal provisions as per the bid documents or contract, if the Procuring Entity concludes that a (prospective) bidder/contractor/ Supplier/ consultant/ service provider, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Procuring Entity may take appropriate measures including one or more of the following:

- a) if his bids are under consideration in any procurement
 - i) Forfeiture or encashment of bid security
 - ii) calling off of any pre-contract negotiations, and;
 - iii) rejection and exclusion of the bidder from the procurement process
- b) if a contract has already been awarded
 - i) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Procuring Entity,;
 - ii) Forfeiture or encashment of any other security or bond relating to the procurement;
 - iii) Recovery of payments made by the Procuring Entity along with interest thereon at the prevailing rate;

c) Provisions in addition to above:

- i) Removal from the list of registered suppliers and debarment of the bidder from participation in future procurements of the Procuring Entity for a period not exceeding two years;
- ii) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
- iii) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

Appendix-CSM-S2/A5**5 Integrity Pact (IP)****Integrity Pact (IP)**

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

2. Ministry of Finance, Department of Expenditure have mandated (OM No.14(12)/2008- E-II(A) dated 19th July 2011)Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact (as per format in Annexure 19) by, depending on the nature of procurements/ contracts above a threshold value. CVC issued a revised Standard Operating procedure (Circular No.04/06/23 dtd 14/06/2023) and stated that, in view of the increasing procurement activities of Public Sector Banks (PSBs), Public Sector Insurance Companies (PSICs) and Financial Institutions (Fis), shall also adopt and implement the suggested format of Integrity Pact. https://www.cvc.gov.in/sites/default/files/vm21ch10/vm17ch10/3.%2018.%20CVC%20Office%20Order%20No.%2041_12_07%20dated%2004.12.2007.pdf.

3. The nature of procurement and threshold of value is to be decided by the Port with approval of the Board. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure.

4. "The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- a) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- b) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally;

- c) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;
- d) Promise on the part of Bidders not to pass any information provided by Principal as part of business relationship to others and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- e) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or allied firms;
- f) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- g) Bidders to disclose any transgressions with any other public/ government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/ are to be reported by the bidders shall be the last three years to be reckoned from date of bid submission. The transgression(s), for which cognizance was taken even before the specified period of three years, but are pending conclusion, shall also be reported by the bidders.;
- h) Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/ Guidelines etc. as may be applicable to the organization concerned;

5. Integrity Pact would be implemented through a panel of Independent External Monitors (IEMs).

6. All organisations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and ensure its effective implementation. The final responsibility for implementing Integrity Pact vests with the Head of organisation/CMD/CEO. The Procurement wing of the organisation would be the focal point for the implementation of Integrity Pact.

7. The provision for the Integrity Pact is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements that meet the criteria laid down in para 3.4-3) above.

8. In all tenders covered under the Integrity Pact, particulars of all IEMs, including their email IDs, should be mentioned instead of mentioning details of a single IEM.

9. Through an appropriate provision in the tender document, it must be ensured that the Integrity Pact is deemed as part of the contract so that its conditions bind the parties concerned. A clause should be included in the Integrity Pact that a person signing the Integrity Pact shall not approach the Courts while representing the matters to IEMs, and they shall await their decision.

10. In the case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In the case of sub-contracting, the Principal contractor shall take responsibility for the adoption of Integrity Pact by the sub-contractor. It is to be ensured that all sub-contractors also sign the Integrity Pact. In the case of sub-contractors, the TP shall be a tri-partite arrangement to be signed by the Organization, the contractor, and the sub-contractor. In respect of a particular contract, the Integrity Pact shall be operative from the date both parties sign it.

11. Further details about appointment and role of IEMs is given in the Annexures

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6 Empanelment/ Pre-qualification of Firms

Development of New Sources and Registration/ Empanelment/ Pre-qualification of Firms

1. Normally, in open tendering, there should be no restriction of prior registration. Entities may provide for registration after selection in unrestricted open tendering. Difference may be noted between registration, empanelment (maintaining a classified list of firms based on their experience usually required in case of limited tenders), and prequalification.

- a) Registration is to establish genuine identification of the firm (e.g., for e-procurement portals, preferential procurement, and so on).
- b) Empanelment is to establish *prima-facie* capability for restricted tendering (not open tendering, e.g., limited tendering panels, also useful in special limited tenders).
- c) Pre-qualification and Multi-use Lists: Wherever the nature of requirement dictates competition only among equally qualified bidders (without vitiation of prices offered by unqualified bidders), prequalification may be done with open tendering in the prequalification bidding stage. If there are frequent requirements of such nature, prequalification may be done through open process with extended validity of Shortlist of Qualified Bidders (called List of approved Sources, in some organisations, e.g., Ministry of Railways), for example, one year or longer. Such use of a List of Qualified Bidders is known as Multi-use list in many countries, as distinct from Limited Tender Panel (which does not undergo formal pre-qualification process).

2. However, since in common parlance, registration is a word interchangeably for the above three concepts, used by most of departments, this usage is being retained, though the distinction would be clear from the context of usage.

3. For goods and services not available on GeM, and for Works, Port may register Firms for requirements which are specifically used by the Port, periodically. Ensuring an up-to-date and current list of registered, capable, and competent Firms facilitates efficiency, economy, and promotion of competition in public procurement, especially while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder qualification to avoid unnecessary repetition/ duplication of efforts, thereby saving time, especially in the case of emergency procurement. Registration of the Firms should be done following a fair, transparent,

and reasonable procedure and after giving due publicity. In case of goods and services, such registered Firms should be on-boarded on GeM as and when the item or service gets listed on GeM. The list of registered Firms should be exhibited on websites of the Port.

4. Ports with a significant volume of procurements may follow their own policies and procedures for registration of Firms, if already existing. The policies and procedures for registration described below is for guidance of Ports, who do not have their own laid down policies/ procedures for this. The Port shall announce the authorities competent to deal with the applications and grant registrations, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the MD/Chairman.

5. Port may use such lists prepared by other Ministries / Departments/Ports as and when necessary. Registered Firms are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders for items, and Monetary Limits for which they are registered.

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

- a) Grade-A: Rs. 25 (Rupees twenty-five) lakh and above;
- b) Grade B: Rupees five lakh to Rs.25(Rupees twenty-five) lakh; and
- c) Grade C: Rupees One lakh and up to Rupees five lakh

7. **Procedure for Registration:**

- a) Registration of the Firms should be done following a fair, transparent, and reasonable procedure and after giving due publicity. Details of the procedure for registration of new firms may be uploaded on the website and published in the form of a booklet for information of the Firms. Timeframes and criteria for registration of new Firms may be clearly indicated;
- b) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new Firms can be obtained from the response received in open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller meets, various publications of NSIC, Development Commissioner of the Small Industries Service Institute, BIS, trade journals, and so on. The e-procurement portal

does pre-registration of bidders online. Such data can be a source of information on prospective Firms;

- c) The list of registered contractors/consultants shall be updated on a regular basis (annually). New Firm(s) may be considered for registration at any time, provided they fulfil all the required conditions. For any larger scale or critical registration or development of new Firms, Port should call for EoI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EoI have been detailed in the Manual.
- d) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of registered Firms, besides any other penalty or more severe action as deemed fit; and
- e) Along with the new/ renewal application for registration, the Firms should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Port's General Conditions of Contract (GCC). Such GCC should be part of the application.
- f) **Eligibility:**
 - i) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for registration;
 - ii) Where registration is granted based on partly OEM/ outsourced arrangements/ agreements, it shall be the responsibility of the registered unit, to always keep such arrangements/agreements renewed/alive, to keep their registration valid for the period for which it has been granted. Any failure in this regard may make the registration null and void retrospectively from any such dates which the registering authority considers appropriate;
 - iii) Firms should possess valid Digital Signature Certificate (DSCs) Class III with the company name at the time of registration/ renewal, to enable them to participate in e-procurements.
 - iv) Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action. Registration requests may not be entertained from such firms, stakeholders of whom have any interest in deregistered/banned firms;

- g) **Assessment of Capacity and Capability:** The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The registration application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, manufacturing capability, quality control system, past performance, after-sales service facilities, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Registration of Firms should be done with the approval of CA.
- h) In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the Department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- i) If considered to be capable after carefully assessing and verifying credentials, the firm may be granted registration with the approval of Competent Authority.
- j) Registration should be for specific trade groups of goods/works/services. For this purpose, all goods/ works/services should be divided into trade groups and the information published on the relevant portals/ websites;
- k) It should be mentioned in the letter of registration that the registration is valid for a fixed period (one to three years). At the end of this period, the registered Firm(s) willing to continue with registration are to apply afresh for renewal of registration. However, the registration would be initially treated as provisional, and it would be treated as confirmed only after the firm has satisfactorily executed one order of the relevant category and value from Port. The extension of validity of registration is not a matter of right and Port reserves the right not to extend such registration without assigning any reason;
- l) All registered Firms should be allocated a unique registration number. Once the firms are registered, a circular shall be issued by the registration authority indicating the names and addresses of the registered Firms with details of the requirements and monetary value they will supply as well as

the validity period, and so on, for which they are registered. The list of registered Firms for the subject matter of procurement be exhibited on the websites of the Port/ e-Procurement/ portals;

- m) Within the monetary limits so prescribed, as also for the category of registration, the registered firm may be exempted from depositing the Earnest Money Deposit (EMD). In other categories and higher monetary limits, the Firm would be treated as any unregistered Firm and not be entitled to the privileges of a registered Firm. The monetary limit or category, so laid down, does not, however, debar a firm from getting orders more than the monetary limit or for other categories, provided the Port is satisfied about the capacity and capability of the firm but a requisite security deposit should be obtained, as is being done in the case of unregistered firms;
- n) Performance and conduct of every registered Firm are to be watched by the concerned Department. Port should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of registration (after giving due opportunity to the Firm to make a representation) if they fail to abide by the terms and conditions of the registration or fail to execute contracts on time or provide sub-standard goods/ works/ services or make any false declaration to any Government agency or for any ground which, in the opinion of the Government, is not in public interest;
- o) Port shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as registered suppliers for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the registered suppliers list; (Rule 150 of GFR 2017)

Appendix-CSM-S2/A7**7 Debarment of Firms from Bidding****1. Debarment**

Rule 151 of GFR, 2017 deals with debarment which is as under:

Registration of suppliers and their eligibility to participate in Procurement Entity'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 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 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.
- b) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement/tender process of any procuring entity for a period not exceeding three years commencing from the date of debarment.
- c) The Port may debar a bidder or any of its successors, from participating in any procurement /tender process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Port will maintain such list which will also be displayed on their website.
- d) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

2. Guidelines on Debarment of firms from Bidding

These guidelines are Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021. The guidelines with subsequent amendments if any shall be followed.

The guidelines are classified under following two types:-

- a) In cases where debarment is proposed to be limited to one port, the appropriate Orders can be issued by that Port itself, thereby banning all its business dealing with the debarred firm.

- b) Where it is proposed to extend the debarment in all ports i.e., the requisite Orders shall be issued by the Ministry of Ports, Shipping and Waterways.

3. Definitions

- a) **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.
- b) **Allied firm:** All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 - i) Whether the management is common;
 - ii) Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 - iii) Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 - iv) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 - v) All successor firms will also be considered as allied firms.
- c) The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

4. Debarment by a Single Port

Orders for Debarment of a firm(s) shall be passed by the Port, keeping in view of the following:

- a) A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- b) Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017 including subsequent amendments if any.
- c) False declaration of local content by Class I/ Class II local suppliers under Public Procurement (Preference to Make in India, Order 2017, dtd 16/09/2020 or later, i.e., the Make in India Order) shall also be treated as a breach of code of integrity. The fact and duration of debarment for this

reason by any Port must be promptly brought to the notice of the Member-Convenor of the Standing Committee (under the Make in India order) and the Department of Expenditure through the concerned Ministry /Department or in some other manner. On a periodical basis such cases shall be consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment must be maintained and displayed on website(s).

A supplier who has been debarred by any Port as this sub para, shall not be eligible for preference under the Make in India Order for procurement by any other procuring entity for the duration of the debarment. This shall be effective from the date of uploading of such debarment on the website(s).

- d) A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Port, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
- e) The Port before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
- f) MD/Chairman may nominate an officer at the rank of HOD or other officer as per DOP to debar the firms.
- g) Port that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of MD/Chairman.
- h) The Port will maintain list of debarred firms, which will also be displayed on its website.
- i) Debarment is an executive function and should not be allocated to Vigilance Department.

5. Timeline of Debarment Process:

The period of debarment starts from the date of issue of debarment order; therefore, the process of debarment should be conducted in an expeditious manner. Considering the quasi-judicial nature of such proceedings and need to afford a fair hearing to the

firm, following timeline is suggested, which may be suitably modified considering the specifics of an organisation:

- i) Noticing of delinquency of the firm by the Port – zero day
- ii) Evaluation of evidence and proposal to Competent Authority for banning of the firm - 2 Weeks
- iii) Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
- iv) Time for submission, including reminders etc – 3 weeks.
- v) Evaluation of firm's submission and giving oral hearing to firm – 3 weeks
- vi) Final Order, indicating opportunity to the firm 2 weeks' time to appeal to the MD/Chairman as appellate authority – 2 weeks.
- vii) Total 12 weeks from zero day, after which debarment period starts.
- viii) Receipt of Appeal and disposal the same by the appellate authority – 4 weeks.

6. Effective Date

For the Port which has carried out the debarment the period of debarment starts from the date of issue of debarment order. In respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in such a manner that ongoing procurements are not disrupted.

7. Jurisdiction

It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSEs) etc. of the Ministry/ Department issuing the debarment Order.

8. Debarment by CPSEs, Attached Offices/ Autonomous Bodies, GeM

It is possible that the firm may be debarred concurrently by more than one Port/Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSEs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in sub-paras i) to vii) above are to be kept in mind. Debarment by such bodies like CPSEs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal.

9 Debarment across All Ports

- i) Where the Port is of the view that business dealings with a particular firm should be banned across all the Ports by debarring the firm from taking part in any bidding procedure floated by the Ports, the Port should forward a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents to the Ministry. The Ministry will issue the necessary orders after satisfying itself that proposed debarment across all the Ports is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- ii) The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by the Ministry.
- iii) The Port before forwarding the proposal to Ministry must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If Ministry realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Port shall be rejected.
- iv) Ministry may also give additional opportunity, at their option, to firm to represent against proposed debarment. Ministry can also take suo-moto action to debar the firms in certain circumstances.
- v) No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Port after the issue of a debarment order.
- vi) Ministry will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

10. Revocation of Orders

- i) An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
- ii) A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

11. Other Provisions (common to both types of debarments)

- i) No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Port/Ministry. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender

(first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.

- ii) If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
- iii) Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
- iv) The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the “Debarment Order”.
- v) Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- vi) The period of debarment shall start from the date of issue of debarment order.
- vii) The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
- viii) Ordinarily, the period of debarment should not be less than six months.
- ix) In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
- x) All Ports must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

13. Safeguarding Procuring Entity's Interests during debarment of suppliers: Suppliers are important assets for the Port and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Port. Therefore, views of the concerned Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the

circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose. (Rule 151 of GFR 2017).

Appendix-CSM-S2/A8

8 Guidelines for Evaluation of Concurrent Application**Guidelines for Evaluation of Concurrent Application of the MSE and MII Preferences**

1. The concurrent application of the two procurement orders i.e., MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. To bring predictability both to the procuring entities as well as bidders, guidelines were issued by DoE. These guidelines are explained below. Examples to illustrate the application of these guidelines are given in the Annex to this Appendix.
2. The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category: If Supplier is:	Terminology: Supplier	Acronym for this Para
both MSE & Class-I local supplier	"MSE Class-I local"	M-C1
MSE but not Class-I local supplier	"MSE but non-Class-I local"	M-NC1
not MSE but is Class-I local supplier	"Non-MSE but Class-I local"	NM-C1
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local"	NM-NC1

3. The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

Scenario-1: Items for which Nodal Ministry has notified sufficient local capacity and competition. For these items, only Class-I local suppliers are eligible to bid irrespective

of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid.

Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.

Scenrio 2: Items reserved exclusively for procurement from MSEs as per PPP-MSE Order: These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1
- ii) L-1 is "MSE non-Class—I local supplier" - Purchase preference is to be given to "MSE Class-I local supplier" if any, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- iii) If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:

Scenario 3: Items which are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
- ii) L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to "MSE Non-ClassI Local Supplier", if any if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
- iii) L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to "Non-MSE Class-I local supplier", if any if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
- iv) L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs above" as per PPP- MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annex to this annexure).

Scenario 4: Items which are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:

- i) L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
- ii) L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If the lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
- iii) If conditions mentioned in sub paras 1) and 2) above are not met i.e., L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
- iv) 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.
- v) L-2 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept — contract to be awarded to L-1.

Scenario 5: Items reserved for both MSEs and Class-I local suppliers: These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/ Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.

Scenario 6: Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry..

Annex to Appendix: CSM-S2/A8

Examples of Evaluation of Concurrent Application of the MSE and MII Preferences

- Given below are the examples to explain the different scenarios that may arise during the concurrent evaluation of MSE and Class-I local suppliers. The scenarios are further divided into the various sub-scenarios considered as 'Distribution (D)' to provide clarity on the quantity distribution, which shall take place among the MSE and Class-I local suppliers. Please note the acronyms, given in table under para 2 of the Appendix-8 above).
- Example explaining applicability in scenario explained in Scenario 3 in Appendix-8: (Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.) Item — Desktop computer, Qty — 100 Nos.

(i) L-1 is 'Non-MSE but Class-I Local Supplier' (NM-C1) [Scenario 3 -2] in Appendix-8] Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	NM-C1	74 (L1)	75 (L1)	75 (L1)	100 (L1)
2.	B	110	L2	M-NC1	Accepts 13 (MSE)	Accepts 25 (MSE)	Does not accept	Does not accept
3.	C	112	L3	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
4.	D	115	L4	M-NC1	Accepts 13 (MSE)	Does not accept	Accepts 25 (MSE)	Does not accept
5.	E	118	L5	NM-C1	Not Eligible	Not Eligible	Not Eligible	Not Eligible
6.	F	120	L6	MC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

a) First purchase preference is to be given to MSEs as per PPP-MSE Order.

- b) MSE bidders to be invited for placement of 25% of tendered quantity of 100 Nos. i.e., 25 Nos.
- c) Those MSE bidders are to be invited whose quoted rates falls within 15% margin of purchase preference, to match the L1 price.
- d) Accordingly, the following distributions may happen:

A. Distribution-1 (D-1)

1. MSE bidders B (L2) and D (L4) are invited to match L1 price i.e., INR 100/-.
2. Both bidders B and D agree to match the L1 price.
3. The quantity of 25 nos. is distributed equally among bidders B and D i.e., $25/2=12.5$ nos. (say 13 nos.)
4. Bidders B and D are awarded the quantity of 13 nos. of computers each (i.e., a total of 26 nos. of computers placed on MSE bidders)
5. The remaining quantity of 74 nos. of computers [100-26] is placed on the L1 bidder.

B. Distribution-2 (D-2)/ Distribution-3 (D-3)

1. Either bidder B or bidder D agrees to match the L1 price.
2. 25 nos. quantity (25% of 100 nos.) is placed on the bidder (B or D).
3. The balance quantity of 75 nos. computers (100-25) is placed on the L1 bidder.

C. Distribution-4 (D-4)

1. None of the MSE bidders agree to match the L1 price. No MSE preference given.
2. Entire quantity of 100 nos. computers is placed on the L1 bidder i.e., Bidder "A", being a Class I bidder.

(ii) L-1 is “MSE but non-Class-I Local Supplier (M-NC1) [Scenario 3 -3] in Appendix-8]. Details of bids received:

SN	Bidder	Rates quoted (INR)	Rank	Status of bidder	D-1	D-2	D-3	D-4
1.	A	100	L1	M-NC1	50 (L1)	50 (L1)	50 (L1)	100 (L1)
2.	B	110	L2	NM-NC1	Not Eligible	Not Eligible	Not Eligible	Not Eligible

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3.	C	112	L3	NM-C1	Accepts 50 (MII)	Does not accept	Does 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.

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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 agree to match the L1 price, but MSE bidder D agrees.
3. The quantity of 25 nos. (25% of 100 nos.) is placed on the MSE bidder D.
4. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5 or say, 38 nos. of computers.
5. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
6. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 38 nos. of computers is awarded to bidder 'D'.
7. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

D. Distribution-4 (D-4)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C and D agree to match the L1 price. The quantity of 25 nos. is distributed equally among bidders B and D i.e., $25/2=12.5$ nos. (say 13 nos.) each.
3. The balance quantity remaining is 74 nos. (100-26). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D agrees and the quantity of 37 nos. of computers is awarded to bidder 'D'.
6. The balance quantity of 37 nos. of computers [100-26-37], is placed on the L1 bidder 'A'.

E. Distribution-5 (D-5)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidders C agrees to match the L1 price, however, bidder D does not agree. Hence, the 25% of 100 nos. of computers i.e., 25 nos. are awarded to MSE bidder C.

3. The balance quantity remaining is 75 nos. (100-25). Next, purchase preference shall be given as per MII Order for the placement of 50% of the balance quantity, i.e., for 37.5, say 38 nos. of computers.
4. Bidder B, being the Class-I local supplier is invited to match the L1 price, since its quoted rate falls within margin of purchase preference of 20%.
5. Bidder B does not agree to match the L1 price. Hence, the next Class-I local supplier, bidder 'D' is invited to match the L1 price. Bidder D also does not agree to match the L1 price. The next class-I local supplier 'E' is invited that does not agree either. The next class-I local supplier 'F' is invited (who happens to be a MSE bidder as well, however, since the quoted price of bidder 'F' in case of MSE preference was beyond 15% margin of preference, hence it was not invited to match the L1 price while going for MSE preference). For MII preference, the price quoted is within the margin of 20%. The bidder 'F' agrees to match the L1 price. The quantity of 38 nos. of computers is placed on bidder 'F'.
6. The balance quantity of 37 nos. of computers [100-25-38], is placed on the L1 bidder 'A'.

F. Distribution-6 (D-6)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. Neither of the MSE bidders (C and D) agrees to match the L1 price. Hence, no MSE purchase preference is given.
3. The next purchase preference is given to Class-I local supplier as per the MII Order for the 50% of the tendered quantity i.e., for 50 nos. of computers. Bidder 'B' being the lowest quoting Class-I local supplier with its quoted price falling within the margin of purchase preference of 20% is invited to match the L1 price.
4. Bidder 'B' agrees to match the L1 price. The quantity of 50 nos. of computers is awarded on bidder 'B'.
5. The balance quantity of 50 nos. of computers [100-50] is placed on the L1 bidder 'A'.

G. Distribution-7 (D-7)

1. MSE bidder C and D are invited to match L1 price i.e., INR 100/-.
2. MSE bidder 'C' agrees to match the L1 price only. Hence, 25% of the total tendered quantity i.e., 25 nos. of computers are awarded on the MSE bidder 'C'.
3. The next purchase preference is to be given to Class-I local supplier as per the MII Order for the 50% of the balance quantity of 75 nos. i.e., for 37.5 or say 38 nos. of computers. First Class-I bidder invited is bidder 'B' to match the L1 price. Bidder 'B' does not agree to

match the price. Subsequently, bidders 'D', 'E' and 'F' are invited one by one, after each of the bidder does not agree to match the L1 price.

4. None of the Class-I local suppliers agree to match the L1 price. Hence, no purchase preference under MII order is given.
5. The balance quantity obtained, after the placement of 25 nos. quantity of computers on MSE bidders, is placed on bidder 'A' the L1 bidder for 75 nos. computers.

3. Example explaining applicability in Scenario 4 in Appendix-8 (Non-Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference.). Item — Software License, Unit — 100 Nos..

(i) **L-1 is "Non-MSE but Class-I Local Supplier"** [Scenario 4 -2) in Appendix-8]. Details of bids received:

S. No.	Name of bidder	Rates quoted	Price Ranking	Status of bidder
1.	A	100	L1	"Non-MSE but Class-I local supplier"
2.	B	110	L2	"MSE but non- Class-I local supplier"
3.	C	112	L3	"MSE Class-I local supplier"
4.	D	115	L4	"MSE Class-I local supplier"
5.	E	118	L5	"Non MSE non-Class-I local supplier"
6.	F	120	L6	"MSE Class-I local supplier"

- 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 Appendix-8]: The approach explained in example 2. (i) above to be followed.

(iii) L-1 is neither "MSE Class-I Local Supplier" nor "MSE Class-I Local Supplier" is eligible [Scenario 4 -3) in Appendix-8], then:

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'.

Appendix-CSM-S2/A9

9 FAQs in Respect of Public Procurement Policy for MSEs

FAQs in Respect of Public Procurement Policy for MSEs Order, 2012

Q.No.1: What is the share of procurement from MSEs out of the total procurement made by Central Government Ministries/ Departments/ Public Sector Undertakings?

Ans. Under amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by Central Government Ministries / Departments / Public Sector Undertakings are to be made from MSEs.

Q. No.2: Is there any reservation for MSEs owned by SC/ST/ Women entrepreneurs?

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

Q No.3: Who is eligible for availing the benefits under the Public Procurement Policy?

Ans. As mentioned in Section 7(4) of Ministry of MSME's Notification No. S.O2119(E) dated 26th June 2020, an enterprise registered with any other organization under the Ministry of MSME shall register itself under Udyam Registration. With effect from 01.07.2020, MSEs registered under Udyam Registration are eligible to avail the benefits under the Policy. MSEs registered under Udyog Aadhaar Memorandum (UAM), validity of which is till 31.03.2022, are also eligible to avail the benefits under the Policy.

Q.No.4: What is the date of implementation of the policy?

Ans. The policy is applicable with effect from 1.4.2012 and became mandatory with effect from 1.4.2015 onwards.

Q.No.5: Is the Policy transparent, competitive, and cost effective?

Ans. The Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods and services in

accordance with a system which is fair, equitable, transparent, competitive, and cost effective.

Q.No.6: Is the policy implemented in parts or fully from its inception?

Ans. As per Gazette Notification (S.O. 5670(E) dated 8th November 2018, it is mandatory for all Central Government Ministries / Departments/ CPSEs to procure at least 25% of their annual procurement from MSEs including 4% from MSEs owned by SC/ST entrepreneur and 3% from MSEs owned by women entrepreneurs

Q.No.7: Is there any monitoring system for assessing the Government procurement from MSEs?

Ans. To monitor the progress of procurement by Central Government Ministries/ Departments and CPSEs from MSEs, Ministry of MSME has launched the MSME Sambandh Portal on 8th December 2017 for uploading procurement details by all CPSEs on a monthly and an annual basis which is regularly monitored by the Ministry.

Q.No.8: Is there a price matching facility for procurement from MSEs over large scale?

Ans. (i) Price quotation in tenders: In tender, participating Micro and Small Enterprises, quoting price within price band of L1+15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such MSE shall be allowed to supply up to 25 per cent of total tender value.

(ii) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).

Q.No.9: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop MSE Vendors to achieve their targets for MSEs procurement?

Ans. The Central Government Ministries/ Departments/ Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the GeM Portal. To develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme.

Q.No.10: What steps are to be taken by the Central Government Ministries/ Departments/ CPSEs to develop vendors from MSEs owned by SC/ST/Women entrepreneurs?

Ans. For enhancing the participation of MSEs owned by SCs / STs/ Women in Government procurement, Central Government Ministries / Departments / CPSEs must take the following steps:

- i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSEs for SC/STs and Women.
- ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS). iv. A National SC/ST hub scheme was launched in October 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.

Q.No.11: What are the other benefits /facilities available to the MSEs under the policy?

Ans. To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender sets free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring in transparency in tender process. However, exemption from paying of Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process.

Q.No.12: Is there any review mechanism for monitoring and reviewing of the policy?

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

Q. No.13: What is the grievance redressal mechanism in case of non-compliance of the Policy by any Government Department?

Ans. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance Cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

Q. No.14: Whether there is any kind of purchase that has been kept out of the purview of procurement under the Policy? If yes, how is the monitoring of the set goal done?

Ans. Given their unique nature, Defence armament imports will not be included in computing 25% goal for M/o Defence. In addition, Defence Equipments like weapon systems, missiles, etc. will remain out of purview of such policy of reservation. Monitoring of goals set under the policy will be done, in so far as they relate to the Defence sector,

by Ministry of Defence itself in accordance with suitable procedures to be established by them.

Q.No.15: From where can the details of the Policy be obtained?

Ans. Policy details are available on the website of this office at www.dcmsme.gov.in.

Q.No.16: Is this policy mandatory under any Act?

Ans. Yes, the Policy is mandatory and notified under the MSMED Act, 2006.

Q.No.17: How many items are reserved for exclusive purchase from MSEs?

Ans. There are 358 items reserved for exclusive purchase from MSE Sector.

Q.No.18: Whether this policy is applicable for works/ trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of Public Procurement Policy for MSEs Order,2012.

Q.No.19: Whether the Policy is applicable for MSEs registered with NSIC?

Ans. The Policy is applicable for all MSEs registered under Udyam Registration and Udyog Aadhar Memorandum (valid till 31.03.2022).

Q.No.20: Whether the Policy provides benefits for exemption from Security Deposit/ Performance Bank Guarantee to MSEs?

Ans. No, there is no exemption on Security Deposit/ Performance Bank Guarantee under the Policy.

Q.No.21: Can MSEs quoting a price within the band L1+15% be given complete supply to tender in case tender item cannot be split /divided?

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

Q.No.22: Which are the MSEs owned by SC/ST enterprises?

Ans. The definition of MSEs owned by SC/ ST is as given under:

- (a) In case of proprietary MSE, proprietor(s) shall be SC /ST.
- (b) In case of partnership MSE, the SC / ST partners shall be holding at least 51% shares in the unit.
- (c) In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.

Q.No.23: Can the Central Government Ministries/ Departments/ CPSEs who have a meagre value of total procurement be exempted from the Policy?

Ans. The Policy is applicable to all the Central Government Ministries / Departments / CPSEs, irrespective of the volume and nature of procurement.

Q.No.24: Does the Policy have a provision for exemption from 25% procurement target?

Ans. The Review Committee may consider any request of Ministries / Departments / CPSEs for exemption from the present 25% procurement targets on a case-to-case basis.

Q.No.25: Does laminated paper Gr. I, II and III fall under the paper conversion product (Sl.No.202) and is a reserved item for exclusive procurement from MSEs?

Ans. As per Policy Circular No. 21(6)/2016-MA dt. 26th May 2016, it is clarified that only paper bags, envelopes, ice-cream cups, paper cups and saucers and paper plates are covered under the head "Paper Conversion products" at Sl. No. 202 of the list of reserved items under the Public Procurement Policy for MSEs Order-2012. Accordingly, the description of Sl. No. 202 as indicated in the English version of the Reserved List will be applicable.

Q.No.26: Are MSEs having Udyam Registration Certificate eligible for availing benefits under the PP Policy?

Ans. Yes, Udyog Aadhar has been replaced with Udyam Registration Certificate w.e.f. 01.07.2020. Udyam Registered MSMEs can avail the benefits under the Public Procurement Policy. The UAM will also remain valid till 31.03.2022.

Q.No.27: Does the Ministry give any certificate for MSEs having Udyam Registration?

Ans. The Erstwhile Udyog Aadhaar Memorandum (UAM valid till 31.03.2022) has been replaced by Udyam Registration Certificate (w.e.f. 01.07.2020). As part of ease of doing business, Udyam Registration Certificate (URC) has been introduced through a dedicated portal on self-certification basis. An acknowledgement of URC is generated online instantly which is accepted by all Central Government Ministries / Departments / CPSEs and State Govts.

Q.No.28: Is the Public Procurement Policy applicable to State Governments/ State Departments/ State PSUs?

Ans. The Public Procurement Policy for MSEs Order, 2012 is applicable to Central Government Ministries/ Departments and CPSEs. This Policy is not applicable to State Government Ministries/ Departments/ PSUs.

Q.No.29: Are the benefits of Public Procurement Policy applicable to MSEs who are not registered for the tendered items?

Ans. The benefits of PPP should be given to all eligible MSEs irrespective of relevance of product Category and as per Sl. No. 3 of FAQ.

Q.No.30: Can the relaxation of norms for start-ups and MSEs in Public Procurement Policy in prior experience and prior turnover criteria be given to all MSEs?

Ans. It is clarified that all Central Government Ministries/ Departments/ Central Public Sector Undertakings may relax conditions of prior turnover and prior experience with respect to Micro and Small Enterprises in all public procurement, subject to meeting of quality and technical specifications (In exercise of Para 16 of Public Procurement Policy for Micro and Small Enterprises, Order 2012).

However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities (O.M.No.F.20/2/2014PPD(Pt.) dated 20.09.2016 issued by DoE).

Q.No.31: Has the Ministry clarified the sub target of procurement from SC/STs/Women entrepreneurs under amended Public Procurement Policy for MSEs, Order 2012?

Ans. It is clarified that sub-targets of 4% (within 25% of annual procurement target) and 3% (within 25% of annual procurement target) have been earmarked for procurement from MSEs owned by SC&ST and Women entrepreneurs, respectively under the amended Public Procurement Policy for MSEs Order, 2012.

Q.No.32: Are Works Contracts a part of Services? What is the difference between Works and Services?

Ans. Works Contracts are not covered under the purview of Public Procurement Policy for MSEs. The definition is available in GFR Rules 130, 143, 177 & 197.

Q.No.33: Is there any provision to take action against the defaulting MSEs under the Policy?

Ans. There is no such provision under the Policy. The procuring entity may take appropriate action as per terms and conditions (T&C) of the tender documents and/or as per GFR Rules.

Q.No.34: Are financial institutions/ autonomous bodies included in the PP Policy?

Ans. The Policy is applicable for all Central Government Ministries/ Departments and CPSEs.

Q.No.35: Can the Ministry take action against the procuring agency for Delay in return of the Security Deposit of the MSEs?

Ans. There is no such provision under the Policy. The matter can be referred to the department concerned for taking appropriate action in the interest of the MSE complainant.

Q.No.36: Is it mandatory for MSEs to disclose their status as SC/ST/Women in Udyam Registration Certificate (URC)?

Ans. Yes, it is mandatory to disclose the status as SC/ST/Women for in Udyam Registration.

Q.No.37: Have the State Governments been asked to frame a Public Procurement Policy for MSEs?

Ans. Yes, all the State Governments have been requested to frame the Public Procurement Policy on similar lines.

Q.No.38: Have all the CPSEs been uploading their monthly and annual procurement details, on MSME SAMBANDH Portal?

Ans. Most of the CPSEs are uploading their procurement details on the portal.

Q.No.39: Is there any provision to take action against the procuring agency for noncompliance of PPP-MSE under the Policy?

Ans. No, there is no such provision in the Policy.

Q.No.40: What is the objective of the Policy?

Ans. The objective of the Policy is to promote Micro and Small Enterprises (MSEs) by improving their market access and competitiveness through: - Increased participation in Government purchase.

- Encouraging relationship (including product development) between MSEs and Public Sector Undertaking (PSUs).
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.
- Increased share of supplies of MSEs to Central Government Ministries/ Departments and CPSEs.

Q.No.41: What are the items or goods which can be procured from MSEs to achieve the target of 25% from MSEs?

Ans. To achieve the target Government / CPSEs they can procure.

The items from the list of 358 items reserved for procurement from MSEs.

Items which are being manufactured by MSEs, besides reserved items.

Q.No.42: How is the status of Enterprises as MSEs be verified?

Ans. The status of enterprises as MSEs can be verified through their Udyam Registration Certificate or UAM certificate, which is valid till 31st March, 2022. As per notification No. S.O. 2119(E) dated 26.06.2020, in case of any discrepancy or complaint, the General Manager of the District Industries Centre of the District concerned shall undertake an inquiry for verification of the details of Udyam Registration/UAM submitted by the enterprise and thereafter forward the matter with necessary remarks to the Director or Commissioner or Industry Secretary concerned of the State Government who after issuing a notice to the enterprise and after giving an opportunity to present its case and based on the findings, may amend the details or recommend to the Ministry of MSME, Government of India, for cancellation of the Udyam Registration Certificate/UAM.

Q.No.43: Can sub-contracting be considered under the procurement target from MSE?

Ans. Yes, if subcontract is given to MSEs, it will be considered as procurement from MSEs.

Q.No.44: If MSEs participate in tender but the procuring agency denies providing benefits under the Policy, how can the problem be addressed?

Ans. The problem can be resolved through the Grievance Cell constituted to tackle such situations and the matter may be referred to the procuring agency concerned to redress the problem.

Q.No.45 What are the steps taken by the Ministry of MSME to promote marketing through GeM portal for supply of Goods or rendering services from MSEs to Government Departments and CPSEs?

Ans. CEO, GeM has been requested to make a provision in the GeM portal for procurement of goods and services from MSEs through linking URC.

- Udyam Registration Portal has a facility through which an entrepreneur can opt for linking itself with Government e-market (GeM) place by selecting an option on Udyam Portal. The enterprise will be linked to GeM portal and flow of information will start between these two portals. With this facility, MSEs can link themselves with the Government's procurement system and can participate in Government's mandatory procurement programme from MSEs.
- All CPSEs have been requested to procure goods and services from MSEs, through GeM portal only.

- The Ministry of MSME has signed an MOU with CEO, GeM, for mobilizing MSEs for onboarding themselves on the GeM portal for supply of goods & services from MSEs.
- All UAM holders had been requested to register themselves on GeM portal for supply of goods and services through GeM portal.

Q.No.46: What is the difference between PPP-MII Order, 2017 and PPP-MSE Order, 2012?

Ans. The Public Procurement Policy for MSEs Order, 2012 is a delegated legislation deriving authority from the Act of Parliament. PPP-MII, Order, 2017 is an executive Order.

Q.No.47: Can Joint Ventures take the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Joint Ventures. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.48: Can Consortiums with Foreign Company takes the benefits of the Public Procurement Policy for MSEs Order, 2012?

Ans. No, Under Udyam Registration (and earlier under UAM), there is no provision of registration of Consortium. As mentioned in S. No. 3 above, benefits of the Public Procurement Policy for MSEs Order, 2012 can be availed by those MSEs which are registered on the Udyam Registration portal.

Q.No.49: Can trader benefits from Public Procurement Policy, for MSEs Order, 2012?

Ans. No, as mentioned in O.M. No. 5/2(2)/2021-E/P & G/Policy dated 02.07.2021, Retail and Wholesale traders can register on Udyam Registration Portal for the purpose of Priority Sector Lending (PSL) only.

Appendix-CSM-S2/A10

10 Arbitration

1. Arbitration in Contracts

1. **Arbitration Agreement:** If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015 and 2021]. For this purpose, when the contract is with a domestic Contractor, a standard arbitration clause (hereinafter called the 'Agreement') may be included in the Tender Document (Please refer to the Model Tender Document) indicating the arbitration procedure to be followed, based on which the Arbitration Act shall become applicable.
2. This Agreement shall continue to survive termination, completion, or closure of the Contract for 120 days after that. The venue of arbitration should be the place from where the contract has been issued.
3. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provides parties to a dispute (where one of the parties is a Micro or Small Enterprise) to be referred to the Micro and Small Enterprises Facilitation Council if the dispute is regarding any amount due under Section 17 of the MSMED Act, 2006. If a Micro or Small Enterprise, being a party to dispute, refers to the provisions in the MSMED Act 2006, these provisions shall prevail over this Agreement.
4. **Government Guidelines on Arbitration in Contracts:** Department of Expenditure, Ministry of Finance has issued (OM issued by PPD, DoE, MoF: No. F. 1/2/2024-PPD dtd 03.06.2024) following guidelines for arbitration in contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises [CPSEs], Public Sector Banks [PSBs] etc. and Government companies):
 - a) Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.
 - b) As a norm, arbitration (if included in contracts) may be restricted to disputes with a value less than Rs. 10 crores. This figure is regarding the value of the dispute (not the value of the contract, which may be much

higher). It may be specifically mentioned in the bid conditions/ conditions of the contract that arbitration will not be a method of dispute resolution in all other cases.

- c) Inclusion of arbitration clauses covering disputes with a value exceeding the norm specified in sub-para (b) above should be based on careful application of mind and recording of reasons and with the approval of the Managing Director.
- d) In matters where arbitration is to be resorted to, institutional arbitration may be given preference (where appropriate, after considering the reasonableness of the cost of arbitration relative to the value involved).

General or case-specific modification in the application of the above guidelines may be authorised by the Managing Director.

2. Foreign Arbitration

1. The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.
2. When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.
3. The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true, especially for large-value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or India's arbitration rules, whereby it may be in India or any neutral country.

3. Notice for Arbitration

1. 'The Appointing Authority' to appoint the arbitrator shall be Head of the Procuring Organisation named in the contract and includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.
2. In the event of any dispute, if the Adjudicator fails to decide within 60 days, or the mediation is terminated then, parties to the contract, after 60 days but within 120 days of 'Notice of Dispute" shall request the Appointing Authority

through a “Notice for Arbitration” in writing requesting that the dispute or difference be referred to arbitration.

3. The “Notice for arbitration” shall specify the matters in question or the subject of the dispute or difference indicating the relevant contractual clause, as well as the amount of claim item-wise.

4. Reference to Arbitration

After appointing Arbitrator(s), the Appointing Authority shall refer the dispute to them. Only such dispute or difference shall be referred to arbitration regarding which the demand has been made, together with counter-claims or set off. Other matters shall be beyond the jurisdiction of the Arbitrator(s)

5. Appointment of Arbitrator

Notwithstanding the procedures outlined in the following paragraphs, Arbitrators can be appointed through mutual agreement.

1. Qualification of Arbitrators:

- a) In the case of retired officers of The Procuring organisation, they shall have retired in the rank of Senior administrative grade (or equivalent) and shall have retired at least 1 year prior and must not be over 70 years of age on the date of Notice for arbitration.
- b) In the case of serving officers, they shall not be below JA Grade level.
- c) He/ they shall not have had an opportunity to deal with the matters to which the contract relates or who, in the course of his/ their duties as an officer of the Procuring Organisation, expressed views on any or all the matters under dispute or differences. A declaration to this effect shall be taken from the Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal shall, however, not be invalid merely because one or more arbitrators had, in the course of his service, an opportunity to deal with the matters to which the contract relates or who in the course of his/ their duties expressed views on all or any of the matters under dispute.
- d) An Arbitrator may be appointed notwithstanding the total no. of arbitration cases in which he has been appointed in the past.
- e) Not be other than the person appointed by The Appointing Authority, and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

2. Panel of Arbitrators:

The procuring Organisation may prepare, with the approval of the head of the procuring organisation, a panel of serving and retired officers who are willing and qualified (as per para above) to be empanelled as Arbitrators based on integrity, ethics, the experience of dealing in contracts/ tenders, temperament of taking fair decisions, feedback, general image, career profile etc. Such persons should have vigilance clearance and should not be working in the vigilance wing. The performance of empanelled arbitrators should be reviewed annually. The empanelment of a retired officer as arbitrator shall be limited to three procuring entities only, and at any given time, a maximum of two arbitration cases shall be assigned to any arbitrator in Port.

3. Replacement of Arbitrators:

If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or in the event of the arbitrator dying, neglecting/ unable or unwilling or refusing to act for any reason, or his award being set aside by the court for any reason, or in the opinion of The Appointing Authority fails to act without undue delay, the Appointing Authority shall appoint new arbitrator/ arbitrators to act in his/ their place in the same manner in which the earlier arbitrator/ arbitrators had been appointed. Such a reconstituted Tribunal may, at its discretion, proceed with the reference from the stage at which the previous arbitrator (s) left it.

4. Appointment of Arbitrator:

- a) Appointment of Arbitrator where the applicability of section 12 (5) of the Arbitration and Conciliation Act has been waived off:
 - i) In cases where the total value of all claims in question added together does not exceed ₹ 1,00,00,000/- (Rupees One Crore), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a serving officer of the procuring organisation, not below Junior Administrative Grade, nominated by the Appointing Authority. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the designated Appointing Authority.
 - ii) In cases not covered by sub-para i) above, the Arbitral Tribunal shall consist of a panel of three serving officers not below Junior Administrative Grade or two serving officers not below Junior

Administrative Grade and a retired officer (retired not below the rank of Senior Administrative Grade Officer), as the arbitrators. For this purpose, the Appointing Authority shall send a panel of at least four (4) names of Officers, which may also include the name(s) of retired Officer(s) empanelled to work as Arbitrator, to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request to him. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).

- iii) The serving officer working in arbitral tribunal in the ongoing arbitration cases as per sub-para i) and ii) above can continue as arbitrator in the tribunal even after his retirement.
- b) Appointment of Arbitrator where the applicability of Section 12 (5) of the Arbitration and Conciliation Act has not been waived off:
 - i) In cases where the total value of all claims in question added together does not exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Retired Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch

of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the arbitrator within 30 days from the receipt of the names of the Contractor's nominees.

- ii) In cases where the total value of all claims in question added together exceeds Rs. 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Officers, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Appointing Authority will send a panel of at least four (4) names of retired Officer(s) empanelled to work as Appointing Authority Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority. The contractor will be asked to suggest to the Appointing Authority at least 2 names out of the panel for appointment as the Contractor's nominee within 30 days from the date of dispatch of the request by the Appointing Authority. The Appointing Authority shall appoint at least one out of them as the Contractor's nominee and shall also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. The Appointing Authority shall complete this exercise of appointing the Arbitral Tribunal within 30 days of the receipt of the names of the Contractor's nominees. While nominating the arbitrators, it shall be necessary to ensure that one of them is from the Finance/ Accounts Department (officer of Selection Grade of the Finance/ Accounts Department shall be considered as of equal status to the officers in Senior Administrative Grade of other departments for appointment of an arbitrator).
- c) If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, The Appointing Authority shall proceed with the appointment of the arbitral tribunal within 30 days of the expiry of such time provided to the contractor.
- d) **Failure to Appoint Arbitrators:** If the Appointing Authority fails to appoint an arbitrator, or two appointed arbitrators fail to agree on the third arbitrator, within 60 (sixty) days, then subject to the survival of this Arbitration Agreement, in international commercial arbitration, the Supreme Court of India shall designate the arbitral institution for the appointment of arbitrators. In case of national arbitrations, the High Court

shall designate arbitral institutions. The Arbitration Council of India must have graded these arbitration institutions. These arbitral institutions must complete the selection process within thirty days of accepting the request for the arbitrator's appointment.

6. The Arbitral Procedure

1. **Effective Date of Entering Reference:** The arbitral tribunal shall be deemed to have entered the reference on the date on which the arbitrator(s) have received notice of their appointment. All subsequent time limits shall be counted from such date.
2. **Seat and Venue of Arbitration:** The seat of arbitration shall be the place from which the Letter of Award or the contract is issued. The venue of arbitration shall be the same as the seat of arbitration. However, in terms of section 20 of The Arbitration Act, the arbitrator, at his discretion and with the consent of both the parties, may determine a venue other than the seat of the arbitration without in any way affecting the legal jurisdictional issues linked to the seat of the arbitration. The Arbitral Tribunal shall decide any matter related to Arbitration not covered under this Arbitration Agreement as per the provisions of The Arbitration Act.
3. If the Adjudication and/ or Mediation mechanisms had not been exhausted before such reference to Arbitration, the Arbitrator should ask the aggrieved party to approach the designated authority for such mechanisms before the Arbitration proceedings are started.
4. The claimant shall submit to the Arbitrator(s) with copies to the respondent his claims stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within 30 days from the date of appointment of the Arbitral Tribunal unless it has granted an extension.
5. On receipt of such claims, the respondent shall submit its defence statement and counterclaim (s), if any, within 60 days of receipt of the copy of claims, unless the Arbitral Tribunal has granted an extension.
6. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during arbitration proceedings subject to acceptance by the Tribunal having due regard to the delay in making it.

7. Statement of claims, counterclaims and defence shall be completed within six months from the effective reference date.
8. **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day-to-day basis, and no adjournments shall be granted without sufficient cause. The arbitrator (s) may impose an exemplary cost on the party seeking adjournment without sufficient cause.
9. **Award within 12 (twelve) months:** The arbitral tribunal is statutorily bound to deliver an award within 12 (twelve) months from the date when the arbitral tribunal enters reference. The award can be delayed by a maximum of six months only under exceptional circumstances where all parties consent to such extension of time. The court's approval shall be required for further extension if the award is not made out within such an extended period. During the period of an application for an extension of time awaiting before the court, the arbitrator's proceedings shall continue until the disposal of the application.
10. **Cost of Arbitration and Fees of the Arbitrators:** The concerned parties shall bear the cost of arbitration in terms of section 31 (A) of The Arbitration Act. The cost shall inter-alia include fees of the Arbitrator. Further, the fees payable to the Arbitrator shall be governed by instructions issued on the subject by the Port and/ or the Government from time to time, in line with the Arbitration and Conciliation Act, irrespective of the fact whether the Arbitrator is appointed by the Port or the Government under this clause or by any court of law unless directed explicitly by Hon'ble court otherwise on the matter. A sole arbitrator shall be entitled to a 25% extra fee over such a prescribed fee. The arbitrator shall be entitled to a 50 per cent extra fee if the award is made within 6 months in terms of provisions contained in section 29(A) (2) of The Arbitration Act. Besides the above, the Arbitrator shall also be entitled to this extra fee in cases where the Fast Track Procedure in terms of section 29 (B) of The Arbitration Act is followed.
11. **Fast Track Procedure:** The parties to arbitration may choose to opt for a fast-track procedure either before or after the commencement of the arbitration. The award in fasttrack arbitration is to be made out within six months, and the arbitral tribunal shall be entitled to additional fees. The salient features of the fast-track arbitration are:
 - a) The dispute is to be decided based on written pleadings only. Port may encourage Fast Track Procedure based on written pleadings only.

- b) The arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.
- c) An oral hearing may be held only if all the parties request or the arbitral tribunal considers it necessary.
- d) The parties are free to decide the fees of the arbitrator(s) for a fast-track procedure.

12. **Powers of Arbitral Tribunal to grant Interim Relief:** The parties to arbitration may approach the arbitral tribunal to seek interim relief on the grounds available under section 9 of the act. The tribunal has the powers of a court to make interim awards in the proceedings before it.

13. **Confidentiality:** As provided in Section 42A of The Arbitration Act, all the details and particulars of the arbitration proceedings shall be kept confidential, except in certain situations where the disclosure is necessary for the implementation or execution of the arbitral award.

14. **Obligation During Pendency of Arbitration:** Performance of the contract shall, unless otherwise directed by the Port, continue during the arbitration proceedings, and no payment due or payable by the Port shall be withheld on account of such proceedings, provided; however, it shall be open for Arbitral Tribunal to consider and decide whether or not the performance of the contract or payment therein should continue during arbitration proceedings.

15. **The Arbitral Award:** In the case of the Tribunal, comprising three members, any ruling on an award shall be made by a majority of members of the Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail. The arbitral award shall state item-wise the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award can be inferred from it. It shall be further a term of this arbitration agreement that where the arbitral award is for the payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made in terms of Section 31 (7) (a) of The Arbitration Act. The award of the arbitrator shall be final and binding on the parties to this contract. A party may apply for corrections of any computational errors, typographical or clerical errors, or any other error of a similar nature occurring in the award or interpretation of a specific point of the award to the Tribunal within 60 days of receipt of the award. A party may apply to the Tribunal within 60 days of receiving the award to make an additional award as

to claims presented in the arbitral proceedings but omitted from the arbitral award.

7. Challenging Arbitration/ Judicial Awards

1. In matters covered by arbitration/ court decisions (Notified vide OM No. F. 11/21/2024-PPD issued by Department of Expenditure dated 03.06.2024), the guidance contained in 'General Instructions on Procurement and Project Management' dated 29.10.2021 (Notified vide OM No. F.1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021) should be kept in mind. In cases where there is a decision against the government/ public sector enterprise, the decision to challenge/ appeal should not be taken routinely, but only when the case genuinely merits going for challenge/ appeal and there are high chances of winning in the court/ higher court.
2. In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest, which may become payable to the Ministry/ Department should the subsequent court order require a refund of the said amount.
3. The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first for payment of lenders' dues, second for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account after settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, and other amounts withheld may also be released against BG (New rule 227A of GFR, 2017 notified vide OM No. F.1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021).
4. Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken routinely, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals, etc., sometimes resorted

to postpone the problem and defer personal accountability. Casual appeals in arbitration / court cases have resulted in the payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

5. The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind to all facts and circumstances, including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and, after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
6. Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest at a rate that is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in the aggregate, it is in the public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if, in some rare cases of insolvency, etc., recovery of the amount in case of success may become difficult.
7. The only circumstances in which such payment need not be made are when the contractor declines or is unable to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to this are liable to be held personally accountable for the additional interest arising in the event of the final court order going against the Port (As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021).

Appendix-CSM-S2/A11

11 GFR-2017 - RULES

(updated upto 10-7-2024)

Chapter – 6: PROCUREMENT OF GOODS & SERVICES

PROCUREMENT OF SERVICES

A. CONSULTING SERVICES

Rule 177 "Consulting Service" means any subject matter of procurement (which as distinguished from 'NonConsultancy Services' involves primarily non-physical projectspecific, intellectual and procedural processes where outcomes/ deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a procuring entity but does not include direct engagement of a retired Government servant. Note: These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

Rule 178 The Ministries or Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion.

Rule 179 This chapter contains the fundamental principles applicable to all Ministries or Departments regarding engagement of consultant(s). Detailed instructions to this effect may be issued by the concerned Ministries or Departments. However, the Ministries or Departments shall ensure that they do not contravene the basic rules contained in this chapter.

Rule 180 Identification of Services required to be performed by Consultants: Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Ministry/ Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

Rule 181 Preparation of scope of the required Consultant(s): The Ministries/ Departments should prepare in simple and concise language the requirement, objectives

and the scope of the assignment. The eligibility and prequalification criteria to be met by the consultants should also be clearly identified at this stage.

Rule 182 Estimating reasonable expenditure: Ministry or Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organisations engaged in similar activities.

Rule 183 Identification of likely sources.

- (i) Where the estimated cost of the consulting service is up to [Rupees Fifty lakhs], preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Ministries or Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.
- (ii) Where the estimated cost of the consulting services is above [Rupees Fifty lakhs], in addition to (i) above, an enquiry for seeking 'Expression of Interest' from consultants should be published on [GeM as well as on GeM- Central Public Procurement Portal (CPPP)]⁴⁵. An organisation having its own website should also publish all its advertised tender enquiries on the website. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Ministry or Department, eligibility and the prequalification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants.

Rule 184 Short listing of consultants. On the basis of responses received from the interested parties as per Rule 183 above, consultants meeting the requirements should be short listed for further consideration. The number of short listed consultants should not be less than three.

Rule 185 Preparation of Terms of Reference (TOR). The TOR should include

- (i) Precise statement of objectives.
- (ii) Outline of the tasks to be carried out.
- (iii) Schedule for completion of tasks.
- (iv) The support or inputs to be provided by the Ministry or Department to facilitate the consultancy.

(v) The final outputs that will be required of the Consultant.

Rule 186 Preparation and Issue of Request for Proposal (RFP). RFP is the document to be used by the Ministry/Department for obtaining offers from the consultants for the required service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals. The RFP should contain:

- (i) A letter of Invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal.
- (iii) Terms of Reference (TOR).
- (iv) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
- (v) List of key position whose CV and experience would be evaluated.
- (vi) Bid evaluation criteria and selection procedure.
- (vii) Standard formats for technical and financial proposal.
- (viii) Proposed contract terms.
- (ix) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

Rule 187 Receipt and opening of proposals: Proposals should ordinarily be asked for from consultants in 'Two bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelop duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

Rule 188 Late Bids: Late bids i.e. bids received after the specified date and time of receipt should not be considered.

Rule 189 Evaluation of Technical Bids: Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

Rule 190 Evaluation of Financial Bids of the technically qualified bidders: The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per Rule 189

above for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

Rule 191 Methods of Selection/ Evaluation of Consultancy Proposals: The basis of selection of the consultant shall follow any of the methods given in Rule 192 to 194 as appropriate for the circumstances in each case.

Rule 192 Quality and Cost Based Selection (QCBS): QCBS may be used for Procurement of consultancy services, where quality of consultancy is of prime concern.

- (i) In QCBS initially the quality of technical proposals is scored as per criteria announced in the RFP. Only those responsive proposals that have achieved at least minimum specified qualifying score in quality of technical proposal are considered further.
- (ii) After opening and scoring, the Financial proposals of responsive technically qualified bidders, a final combined score is arrived at by giving predefined relative weight ages for the score of quality of the technical proposal and the score of financial proposal.
- (iii) The RFP shall specify the minimum qualifying score for the quality of technical proposal and also the relative weight ages to be given to the quality and cost (determined for each case depending on the relative importance of quality vis-a-vis cost aspects in the assignment, e.g. 70:30, 60:40, 50:50 etc). The proposal with the highest weighted combined score (quality and cost) shall be selected.
- (iv) The weight age of the technical parameters i.e. non- financial parameters in no case should exceed 80 percent.

Rule 193 Least Cost System (LCS). LCS is appropriate for assignments of a standard or routine nature (such as audits and engineering design of non-complex works) where well-established methodologies, practices and standards exist. Unlike QCBS, there is no weight age for Technical score in the final evaluation and the responsive technically qualified proposal with the lowest evaluated cost shall be selected.

Rule 194 Single Source Selection/Consultancy by nomination. The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- (i) tasks that represent a natural continuation of previous work carried out by the firm;

- (ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and
- (iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.
- (iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single source selection.
- (v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.

Rule 195 Monitoring the Contract. The Ministry/Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Ministry/Department's objectives.

Rule 196 Public competition for Design of symbols/logos. Design competition should be conducted in a transparent, fair and objective manner. Wide publicity should be given to the competition so as to ensure that the information is accessible to all possible participants in the competition. This should include publication on the website of Ministry/Department concerned, as also the Central Public Procurement Portal. If the selection has been by a jury of experts nominated for the purpose, the composition of the jury may also be notified.