Annexure IV 2/3

Appendix 1: Basic Aims and Fundamental Principles of Public Procurement

(Refer Para 1.5, 1.6)

1.1 Basic Aims of Procurement – the Five Rs of Procurement

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

i). Right Quality

Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the Procuring Entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value. For the Right Quality, Technical Specification (Terms of Reference (ToR) in case of Procurement of Services) should be the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.

ii). Right Quantity

There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities. Hence, the right quantity is procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities. In case of Procurement of Services, scope of Work determines the quantum of services.

iii). Right Price

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or

should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs (Also termed as life cycle costing - please also refer to para 1.2 below)

iv). **Right Time and Place**

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

v). **Right Source**

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

1.2 Refined Concepts of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) to take into account not only the initial acquisition cost but also cost of operation, maintenance and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of utility/ value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle

costs, as appropriate. Price alone may not necessarily represent VfM. *In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.* These advanced concepts are explained below.

1.2.1 The Concept of Value

Value is a management and economics concept. It represents the extent of satiation of a hierarchy of needs of a person by a product bought for this purpose. This is subjective and difficult to quantify. This is because different persons (or the same persons under different circumstances) would have different hierarchy of needs and would perceive different extents of satiation or value from the same product. There are three sources of the value of a product. The first source of value is from the functional usage of the product (known as use value) and the second source comes from the social status associated with the ownership of the product (esteem value). This can be shown as the difference between a luxury branded gold-plated, diamond encrusted pen and a disposable non-descript functional pen, though both fulfil the broadly same function and have the same use value. The luxury branded pen, in addition to the use value, also has additional esteem value. The third source of value comes from the price that one can get by exchanging or scrapping the product at the end of the useful life of the product. This is called the disposal value. Normally, when people buy a car, they do consider the estimated disposal value of different choices of models. Value is the sum total of all the three values.

1.2.2 Total Cost of Ownership

While the value of a product covers all components of value over the "Whole-Of-Life" (WOL), the costs incurred on the product should also take into consideration the total of various elements of costs incurred over WOL of the product. For this purpose, future costs are discounted to present value (not to be confused with the value we are discussing – this is a financial discounting concept). For example, it would not be prudent to buy a cheap car, which has a very high cost of operating. This is called variously as WOL or "Life-Time-Cost" (LCC) or "Total Cost of Ownership" (TCO). The last is a preferred nomenclature in procurement and is defined as the total of all

costs associated with a product, service, or capital equipment that are incurred over its expected life. Typically, these costs can be broken into four broad categories:

a) **Procurement price.** The amount paid to the vendor/ contractor for the product, service, or capital equipment;

b) **Acquisition costs.** All costs associated with bringing the product, service, or capital equipment into operation at the customer's location. Examples of acquisition costs are sourcing, administration, freight, taxes, and so on;

c) **Usage costs.** In the case of a product, all costs associated with converting the procured part/material into the finished product and supporting it through its usable life. In the case of a service, all costs associated with the performance of the service that is not included in the procurement price. In the case of capital equipment, all costs associated with operating the equipment through its life. Examples of usage costs are inventory, conversion, wastage, lost productivity, lost sales, warranty, installation, training, downtime, and so on; and

d) **End-of-life costs.** All costs incurred when a product, service, or capital equipment reaches the end of its usable life, net of amounts received from the sale of the remaining product or the equipment (disposal value) as the case may be. Examples of end-of-life costs are obsolescence, disposal, clean-up, and project termination costs

1.2.3 Value for Money

Besides value of a product or service, the customer also has his own notion of "value" of a particular sum of money. This is different for different people or even for the same person in different circumstances. When the perceived value of a product matches the perceived value of the amount of money (cost of the product), the customer feels he got the full value for his money. This is called the VfM. In procurement, Total Cost of Ownership is taken to evaluate value for money. Given the limited resources available to the government, ensuring VfM in procurement is the key to ensuring the optimum utilisation of scarce budgetary resources. It usually means buying the product or service with the lowest WOL costs that is 'fit for purpose' and just meets the specification. VfM also incorporates affordability; clearly,

goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the need assessment stage before procurement, commences. In order to address this issue, a change in the procurement approach, specification or business strategy may be required.

Where an alternative is chosen that does not have the lowest WOL costs, then the additional 'value added' benefit must be proportional and objectively justifiable. Assessment of bids should be conducted only in relation to a published set of evaluation criteria (which should be relevant to the subject of the contract), and any 'added value' that justifies a higher price must flow from these defined criteria. In public procurement VfM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VfM outcome. However, where competition is limited, or even absent, other routes may have to be used to establish VfM. These can include benchmarking, construction of theoretical cost models or 'shadow' bids by the procurement agency. For major contracts, this can require considerable financial expertise and external support. A VfM assessment, based on the published conditions for participation and evaluation, may include consideration of some factors such as:

i) Fitness for purpose;
ii) Potential vendor/contractor's experience and performance history;
iii) Flexibility (including innovation and adaptability over the lifecycle of the procurement);
iv) Environmental sustainability (such as energy efficiency and environmental impact); and
v) Total cost of ownership

But due to uncertainties in estimates of various components of TCO (and actual costs over the life-cycle) and intangibles of Value, some element of subjectivity may become unavoidable, and hence is not normally useable in routine Public Procurement cases. Therefore, preference is given to alternative means for ensuring VfM by way of optimal description of needs; development of value-engineered specifications/ Terms of Reference and appropriate packaging/ slicing of requirements and selection of appropriate mode/ bidding systems of procurement etc.

1.3 Fundamental Principles of Public Procurement

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

i). Transparency Principle

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 registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), 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).

ii). 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) mentioned in Chapter 3 of this manual. 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 government 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 of GFR 2017: 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 authority should be satisfied that the selected offer adequately meets the requirement in all respects;*

g) *the procuring authority 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 authority 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) *All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the 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.]*[57]

iii). 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':

[57] Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

a) Preferential procurement from backward regions, weaker sections and 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 sub-point (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order (Public Procurement No.1)[58] which are as follows:

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, specified in Para 12(c) below.

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

[58] Inserted vide Department of Expenditure (DoE), Ministry of Finance (MoF) OM No. F.6/18/2019-PPD dated 23.07.2020.

been issued on or before the date of the order (23rd July 2020); and (ii) cases falling under para 13 below.

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 non-compliant 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, in terms of paras 5(c), 5(d) and 6 read with para (1).

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.

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

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.

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 (6) (a) or (6) (b) or (6) (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.

7. **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 paragraph (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).

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.

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.

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.

11. **Model Clauses/ Certificates**

Model Clauses and Model Certificates which may be inserted in tenders / obtained from Bidders are given at Annexure-2C. 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.

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)[59].

b) The Registration Committee shall have the following members[10]

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[60]. On receipt of an application seeking registration

[59] (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 and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

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[61].

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.

[60] Notified vide OM No.P-45021/112/2020-PP (BE-II) (E-43780) issued by DPIIT dated 30.03.2021

[61] (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 and paragraph G above shall not apply. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

i) 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 by other states or by the Government of India and their agencies/ public enterprises etc.

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.

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[62].

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[63].

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[64].

14. Clarification to Order (Public Procurement No.1) dated 23rd July 2020[65]

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

[62] Notified through Order (Public Procurement No. 2) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020

[63] Notified vide OM No. F.18/37/2020-PPD issued by Department of Expenditure dated 08.02.2021

[64] Notified vide OM No. F.12/1/2021-PPD(Pt) issued by Department of Expenditure dated 02.03.2021

[65] Notified through Order (Public Procurement No. 3) vide F.No.6/18/2019-PPD issued by Department of Expenditure dated 24.07.2020

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 ofthe 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.

iv). **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. Details of such extended legal obligations are given in Appendix 2.

v). **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 authority, 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 registration of bidders, if applicable;
e) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;

f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
g) bids evaluated, and documents relating to their evaluation;
h) contracts and Contract Amendment; and
i) complaint handling, correspondences with clients, consultants, banks.

Appendix– 2: Legal Aspects of Public Procurement

(Refer Para 1.3 and 1.12)

1.0 Relevant Provisions of the Constitution of India

1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – 'Fundamental Rights') grants all its citizens the right "to practise any profession or to carry out any occupation, trade or business". This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

1.2 Persons Authorised to Make and Execute Contracts on Behalf of Governments

"Part III - FUNDAMENTAL RIGHTS - Right to Freedom

§19 Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

(g) to practise any profession, or to carry on any occupation, trade or business."

"Part XII. - Finance, Property, Contracts and Suits

§299 Contracts:

All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof."

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. That is why, above the signatures of such persons, on the contract documents, a legal phrase "For and on Behalf of the President of India/the Governor of State" is written to signify this fact. In a state government, the persons who are authorised to do so are listed in the DFPR. Provisions of DFPR are expanded upon by various departments by issuing SoPP. Rule 224 (1) & (2), Chapter 8: Contract Management of the GFR, 2017 covers this aspect also.

1.3 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage.

Salient features of these mercantile laws relating to Procurement are summarised below.

2.0 Salient Features of the Indian Contract Act

2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

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

expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

i) The Constitution of India;
ii) Indian Contracts Act, 1872;
iii) Sale of Goods Act, 1930;
iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015;
v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
vi) Micro, Small and Medium Enterprises Development (MSMED) Act, 2006;
vii) Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
viii) Right to Information (RTI) Act 2005;
ix) Central Vigilance Commission Act, 2003;
x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
xi) Prevention of Corruption Act, 1988;
xii) The Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy (EXIM Policy), 2015; Foreign Exchange Management Act (FEMA), 1999 and FEMA (Current Account Transactions) Rules, 2000.

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. Some of the salient principles relating to contracts are set out briefly in this chapter.

2.2 Elementary Legal Practices

2.2.1 **What is a Contract?** The proposal or offer when accepted is a promise, a promise and every set of promises forming the consideration for each other is an agreement, and an agreement if made with free consent of parties competent to contract, for a lawful consideration and with a lawful object is a contract.

2.2.2 **Proposal or Offer**: When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal or offer. In a sale or purchase by tender, the tender signed by the tenderer is the proposal. The invitation to tender and instructions to tenderers do not constitute a proposal.

2.2.3 **Acceptance of the Proposal**: When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

2.2.4 **What agreements are contracts**: An agreement is a contract enforceable by law when the following are satisfied. A defect affecting any of these renders a contract un-enforceable

i) Competency of the parties;
ii) Freedom of consent of both parties
iii) Lawfulness of consideration
iv) Lawfulness of object

2.3 Competency of Parties

Under law any person who has attained majority and is of sound mind or not debarred by law to which he is subject, may enter into contracts. It, therefore, follows that minors and persons of unsound mind cannot enter into contracts nor can insolvent person do so.

2.3.1 Categories of persons and bodies who are parties to the contract may be broadly sub-divided under the following heads: -

i) Individuals;
ii) Partnerships;
iii) Limited Companies;
iv) Corporations other than limited companies

a) **Contracts with Individuals**: Individuals tender either in their own name or in the name and style of their business. If the tender is signed by any person other than the concerned individual, the authority of the person signing the

tender on behalf of another must be verified and a proper power of attorney authorizing such person should be insisted on. In case, a tender is submitted in a business name and if it is a concern of an individual, the constitution of the business and the capacity of the individual must appear on the face of the contract and the tender signed by the individual himself as proprietor or by his duly authorized attorney.

b) **Contracts with Partnerships:** A partnership is an association of two or more individuals formed for the purpose of doing business jointly under a business name. It is also called a firm. it should be noted that a partnership is not a legal entity by itself, apart from the individuals constituting it. A partner is the implied authority to bind the firm in a contract coming in the purview of the usual business of the firm. The implied authority of a partner, however, does not extend to enter into arbitration agreement on behalf of the firm. While entering into a contract with partnership firm care should be taken to verify the existence of consent of all the partners to the arbitration agreement.

c) **Contracts with Limited Companies:** Companies are associations of individuals registered under Companies Act in which the liability of the members comprising the association is limited to the extent of the shares held by them in such companies. The company, after its incorporation or registration, is an artificial legal person which has an existence quite distinct and separate from the members of shareholders comprising the same. A company is not empowered to enter into a contract for purposes not covered by its memorandum of association; any such agreement in excess of power entered into the company is void and cannot be enforced. Therefore, in cases of doubt, the company must be asked to produce its memorandum for verification or the position may be verified by an inspection of the memorandum from the office of the Registrar of Companies before entering into a contract. Normally, any one of the Directors of the company is empowered to present the company. Where tenders are signed by persons other than Directors or authorized Managing Agents, it may be necessary to

examine if the person signing the tender is authorized by the company to enter into contracts on its behalf.

d) **Corporation other than Limited Companies:** Associations of individuals incorporated under statutes such as Trade Union Act, Co- operative Societies Act and Societies Registration Act are also artificial persons in the eye of law and are entitled to enter into such contracts as are authorized by their memorandum of association. If any contract has to be entered into with any one or such corporations or associations, the capacity of such associations to enter into contract should be verified and also the authority of the person coming forward to represent the said Association.

2.4 Consent of both Parties

Two or more persons are said to consent when they agree upon the same thing in the same sense. When two persons dealing with each other have their minds directed to different objects or attach different meanings to the language which they use, there is no agreement. The misunderstanding which is incompatible with agreement, may occur in the following cases: -

i) When the misunderstanding relates to the identity of the other party to the agreement;

ii) When it relates to the nature or terms of the transactions;

iii) When it related to the subject matter of the agreement.

2.5 Free consent of both Parties

2.5.1 The consent is said to be free when it is not caused by coercion, undue influence, fraud, mis-representation or mistake. Consent is said to be so caused when it would not have been given but for the existence of coercion, undue influence, fraud, mis-representation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was caused. A party to a contract, whose consent was caused by fraud or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in

the position in which he would have been if the representations made had been true.

2.5.2 In case consent to an agreement has been given under a mistake, the position is slightly different. When both the parties to an agreement are under a mistake as to a matter essential to the agreement, the agreement is not voidable but void. When the mistake is unilateral on the part of one party only, the agreement is not void.

2.5.3 Distinction has also to be drawn between a mistake of fact and a mistake of law. A contract is not void because it was caused by a mistake as to any law in force in India but a mistake as to law not in force in India has the same effect as a mistake of fact.

2.6 Consideration

Consideration is something which is advantageous to the promisor or which is onerous or disadvantageous to the promisee. Inadequacy of consideration is, however, not a ground avoiding the contract. But an act, forbearance or promise which is contemplation of law has no value is no consideration and likewise an act or a promise which is illegal or impossible has no value.

2.7 Lawfulness of object

The consideration or object of an agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law, or is fraudulent or involves or implies injury to the fraudulent property of another or the court regards it as immoral or opposed to public policy. In each of these cases the consideration or object of an agreement is said to be unlawful.

2.8 Communication of an Offer or Proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. A time is generally provided in the tender forms for submission of the tender. Purchaser is not bound to consider a tender, which is received beyond that time.

2.9 Communication of Acceptance

A date is invariably fixed in tender forms upto which tenders are open for acceptance. A proposal or offer stands revoked by the lapse of time prescribed in such offer for its acceptance. If, therefore, in case it is not possible to decide a tender within the period of validity of the offer as originally made, the consent of the tenderer firm should be obtained to keep the offer open for further period or periods.

2.9.1 The communication of an acceptance is complete as against the proposer or offerer, where it is put in the course of transmission to him, so as to be out of the power of the acceptor, and it is complete as against the acceptor when it comes to the knowledge of the proposer or offerer. The medium of communication in government contracts is generally by post and the acceptance is, therefore, complete as soon as it is posted. So that there might be no possibility of a dispute regarding the date of communication of acceptance, it should be sent to the correct address by some authentic fool proof mode like registered post acknowledgement due, etc.

2.10 Acceptance to be identical with Proposal

If the terms of the tender or the tender, as revised, and modified, are not accepted or if the terms of the offer and the acceptance are not the same, the acceptance remains a mere counter offer and there is no concluded contract. It should, therefore, be ensured that the terms incorporated in the acceptance are not at variance with the offer or the tender and that none of the terms of the tender are left out. In case, uncertain terms are used by the tenderers, clarifications should be obtained before such tenders are considered for acceptance. If it is considered that a counter offer should be made, such counter offer should be carefully drafted, as a contract is to take effect on acceptance thereof.

If the subject matter of the contract is impossible of fulfilment or is in itself in violation of law such contract is void.

2.11 Withdrawal of an Offer or Proposal

A tenderer firm, who is the proposer may withdraw its offer at any time before its acceptance, even though the firm might have offered to keep the offer open for a specified period. It is equally open to the tenderer to revise or modify his offer

before its acceptance. Such withdrawal, revision or modification must reach the accepting authority before the *date and time of opening of tender.*

No legal obligations arise out of such withdrawal or revision or modification of the offer as a simple offer is without a consideration. Where, however, a tenderer agrees to keep his offer open for a specified period for a consideration, such offers cannot be withdrawn before the expiry of the specified date. This would be so where earnest money is deposited by the tenderer in consideration of his being supplied the subsidiary contract and withdrawal of offer by the tenderer before the specified period would entitle the purchaser to forfeit the earnest money.

2.12 Withdrawal of Acceptance

An acceptance can be withdrawn before such acceptance comes to the knowledge of the tenderer. A telegraphic revocation of acceptance, which reaches the tenderer before the letter of acceptance, will be a valid revocation.

2.13 Changes in terms of a concluded Contract

No variation in the terms of a concluded contract can be made without the consent of the parties. While granting extensions or making any other variation, the consent of the contractor must be taken. While extensions are to be granted on an application of the contractor, the letter and spirit of the application should be kept in view in fixing a time for delivery.

2.14 Discharge of Contracts

A contract is discharged or the parties are normally freed from the obligation of a contract by due performance of the terms of the contract. A contract may also be discharged: -

i) **By mutual agreement:** If neither party has performed the contract, no consideration is required for the release. If a party has performed a part of the contract and has undergone expenses in arranging to fulfil the contract it is necessary for the parties to agree to a reasonable value of the work done as consideration for the value.

ii) **By breach:** In case a party to a contract breaks some stipulation in the contract which goes to the root of transaction, or destroys the foundation of

the contract or prevents substantial performance of the contract, it discharges the innocent party to proceed further with the performance and entitles him to a right of action for damages and to enforce the remedies for such breach as provided in the contract itself. A breach of contract may, however, be waived.

iii) **By refusal of a party to perform:** On a promisor's refusal to perform the contract or repudiation thereof even before the arrival of the time for performance, the promisee may at his option treat the repudiation as an immediate breach putting an end to the contract for the future. In such a case the promisee has a right of immediate action for damages.

iv) **In a contract where there are reciprocal promises:** If one party to the contract prevents the other party from performing the contract, the contract may be put to an end at the instance of the party so prevented and the contract is thereby discharged.

2.15 Stamping of Contracts

Under entry 5 of Schedule I of the Indian Stamp Act, an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively is exempt from payment of stamp duty. (A note or memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal is not so exempt from stamp duty.)

The Stamp Act provides that no Stamp Duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for such exemption Government would be liable to pay the duty chargeable in respect of such instrument. (Cases in which Government would be liable are set out in Section 29 of the Act).

2.16 Authority for Execution of Contracts

As per Clause 1 of Article 299 of the Constitution, the contracts and assurances of property made in the exercise of the executive power of the Union shall be executed on behalf of the President. The words "for and on behalf of the President of India" should Therefore, follow the designation appended below the signature of the officer authorized in this behalf.

Note 1: The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the Notifications issued by the Ministry of Law from time to time.

Note 2: The powers of various authorities, the conditions under which such powers should be exercised and the general procedure prescribed with regard to various classes of contracts and assurances of property are laid down in Rule 21 of the Delegation of Financial Powers Rules.

2.17 Contract Effective Date

The date of commencement of the obligations under the contract on the parties to a contract is referred as the contract effective date. This date should be invariably indicated in each contract, as per agreed terms and conditions. The Ministries/Departments are advised to set the effective date to be a date after the following:

i) Date of signing of the contract;

ii) Furnishing of performance bond in terms of performance security;

iii) Receipt of Bank Guarantee for advance payment;

iv) Obtaining Export Licence for supply of stores by seller and confirmation by the buyer;

v) Receipt of End User's Certificate. The supplier shall provide the End User's Certificate within 30 (thirty) days of the signing of the contract.

3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996

3.1 Indian Arbitration & Conciliation Act 1996 provides for dispute settlement either by a process of conciliation, and/or by arbitration. This act is based on a 'United Nation's Commission on International Trade Law Model Arbitration Law' with an object to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

3.1 Arbitration

Arbitration is one of the oldest methods of settling civil disputes arising out of and in the course of performance of the contract between two or more persons by reference of the dispute to an independent and impartial third person called the arbitrator, instead of litigating the matter in the usual way through the courts. It saves time and expense, avoids unnecessary technicalities and, at the same time, ensures "substantial justice within limits of the law".

3.2 Arbitrator, Arbitration and Arbitral Award

The person or persons appointed to determine differences and disputes are called the arbitrator or arbitral tribunal. The proceeding before him is called arbitration proceedings. The decision is called an Award. For the purpose of Law of Limitations, The Arbitration for a particular dispute is deemed to have commenced on the date, on which a request for arbitration is received by the respondent.

3.3 Arbitration Agreement

It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if there is an arbitration agreement (in the form of an arbitration clause or a separate arbitration agreement) in the contract. If there is such an agreement, courts are barred from directly entertaining any litigation in respect of such contracts, and are bound instead to refer the parties to arbitration.

3.4 Appointment and Composition of Arbitral Tribunal

Both parties can mutually agree on the number of arbitrators (which cannot be an even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators, or else in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint an arbitrator within 30 (thirty) days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the court may appoint any person or institution as arbitrator. In case of an international commercial dispute, the application for

appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, the application has to be made to the Chief Justice of the High Court within whose jurisdiction the parties are situated.

3.5 Challenge to Appointment of Arbitrator

An arbitrator is expected to be independent and impartial. If there are some circumstances due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. The appointment of an arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to the arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside the arbitral award can be made to the court, after the award is made by the arbitrator. Thus the other party cannot stall further arbitration proceedings by rushing to court.

3.6 Conduct of Arbitral Proceedings

The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the arbitral tribunal may decide themselves on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. The arbitral tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

i) Determine admissibility, relevance, materiality and weight of any evidence;
ii) Decide on their own jurisdiction;
iii) Decide on interim measures;
iv) Termination of proceedings; and
v) Seek court assistance in taking evidence.

3.7 Arbitral Award

The decision of the arbitral tribunal is termed as 'arbitral award'. The decision of arbitral tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The tribunal can make interim award also. An arbitral award is enforceable in the same manner as if it were a decree of the court.

3.8 Recourse against Arbitral Award

Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award), only on the grounds specified in the act, that is, the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award deal with disputes not falling within the terms of reference of arbitrator; composition of the arbitral tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the arbitral award is in conflict with the public policy.

3.9 Conciliation

This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into a common use.

3.10 Changes Introduced by the Arbitration and Conciliation (Amendment) Act, 2015

i) Independence, Disqualification and Obligations of arbitrators at the time of appointment

a) **Independence, Impartiality and Accountability of Arbitrators**: A fixed fee structure ensures the independence of the arbitral tribunal and also provides a

reasonable cost estimate to the parties entering into arbitration. The Amendment Act in the Fourth Schedule prescribes the model fees for arbitrators and the High Courts have been assigned the responsibility of framing the rules for determination of the fees and the manner of its payment. The model fee varies from Rs 45,000 (Rupees forty-five thousands) to Rs 30 (Rupees thirty) Lakhs for various slabs of disputed value from Rupees five Lakh to above Rs 20 (Rupees Twenty) Crore (with a sole arbitrator entitles to 25% (twenty five percent) extra above the model fee) it is clarified that such fees shall not be applicable in International Commercial Arbitration and in cases where parties have agreed for determination of fees as per the rules of an arbitral institution.

b) **Disqualification from appointment:** A long and exhaustive list of specific circumstances which shall act as a bar against any person from being appointed as an arbitrator in a dispute, have been enumerated in the seventh schedule. However, the parties to the dispute have been given the opportunity, after the dispute has arisen, to waive the applicability of the seventh schedule, by mutual written agreement, if they so deem fit. Especially of interest in Public Procurement is disqualification of past or present employees, consultant, advisors or other related business relationship not only with the Procuring Entity but also with any affiliated entity thereof. Thus the earlier practice of appointing serving officers of Procuring Entity as arbitrator is no more legal.

c) **Disclosures:** An arbitrator who is approached for appointment is obligated to disclose as per Sixth Schedule of the Act. The declaration as per a set format removes any ambiguity and ensures uniformity:

1. **conflict of Interest** the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality as per fifth schedule to the Act for arbitrator.
2. **Time constraints:** An arbitrator shall disclose all circumstances which may affect his ability to deliver an award within 12 (twelve) months.

ii) Fast-tracking Arbitration in India

a) **Award within 12 (twelve) months:** The arbitral tribunal is statutorily obligated to deliver an award within 12 (twelve) months from the date when arbitral tribunal enters into reference. The arbitral tribunal is said to have entered upon the reference on the date on which the arbitrator(s) have received notice of their appointment. The award can be delayed by a maximum period of six months only under the special circumstances where all parties give their consent to such extension of time. Where the award is not made out within the statutory period the mandate of arbitrators shall automatically terminate. It is open for the courts to extend the time period for making an award upon receipt of an application by any of the parties. Such extension is to be granted only for sufficient cause and the court in its discretion may impose the following penalties depending on the facts and circumstances of the case:

1. Reduce the fees of arbitrators by up to 5% for each month of delay.
2. Substitute one or all the arbitrators.
3. Impose actual or exemplary costs on any of the parties.

b) **Oral arguments to be held on a day-to-day basis:** Oral arguments as far as possible shall be heard by the arbitral tribunal on a day to day basis and no adjournments shall be granted without sufficient cause. Provision for imposition of exemplary cost on the party seeking adjournment without sufficient cause has also been made.

c) **Fast Track Procedure:** The parties to arbitration may choose to opt for a new fast track procedure either before or after the commencement of the arbitration. The award in fast track arbitration is to be made out within six months. Where the Arbitral Tribunal delivers the award within a period of six months the arbitral tribunal shall be entitled to additional fees. The quantum of such additional fees shall be determined by the parties. The salient features of the fast track arbitration are:

1. Dispute is to be decided based on written pleadings only.
2. Arbitral Tribunal shall have the power to call for clarifications in addition to the written pleadings where it deems necessary.

3. Oral hearing maybe held only if all the parties make a request or if the arbitral tribunal considers it necessary.
4. The parties are free to decide the fees of the arbitrator(s).

d) **Appointment within 60 (sixty) days:** Whenever an application for appointment of Arbitrator(s) is moved before a court such application shall be disposed of as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. The court while appointing arbitrators shall confine itself to the examination of the existence of an arbitration agreement.

3.10.1 **Procedural and Jurisprudence simplified**

a) **Arbitration to commence within 90 (ninety) days of interim relief:** Where the court grants interim relief before the commencement of arbitration, the arbitration must commence within 90 (ninety) days from such order of interim relief. The court however has been given the authority to extend the period within which the arbitration must commence, if it deems such extension necessary. The Act prohibits courts from entertaining any application for interim relief once the arbitration has entered into reference, unless the court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

b) **Powers of Interim Relief in Section 9 also to Arbitral Tribunal:** The parties to arbitration can now directly approach the arbitral tribunal for seeking interim relief on the same grounds as were available to the parties under section 9 of the previous act. Further, the tribunal has now been granted the powers of a court while making interim awards in the proceedings before it.

c) **Arbitral tribunal not bound to rule in accordance with terms of the contract:** The arbitral tribunal was previously bound to deliver an award in accordance with the terms of the agreement and was required to take into consideration the 'usages of the trade applicable to the transaction'. Vide the Amendment the arbitral tribunal has been freed of the obligation to only rule in accordance with the terms of the agreement. The arbitral

tribunal is only required to take the agreement into account while delivering its award and is free to deviate from the terms of the agreement if the circumstances so warrant.

d) Act made applicable on International Commercial Arbitration with even seat outside India: Part I of the act has been made applicable for limited purpose (listed below) on International Commercial Arbitrations even in instances where the seat of the arbitration is outside India, however giving freedom to exclude the applicability the Act by entering into an agreement to this effect:

1. Seeking interim relief from courts [section 9]
2. Seeking the assistance of the court in taking evidence [section 27]
3. Appealing against the order of a court where the court refuses to refer the parties to arbitration. [section 37(1) (a)]
4. Restricting the right to second appeal and preserving the right of parties to approach the Supreme Court in appeal. [section 37 (3)]

4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices

i) The **Preamble of the Competition Act, 2002**, provides for the establishment of a Commission keeping in view of the economic development of the country to promote and sustain competition in markets; prevent practices having adverse effect on competition; protect consumer interest; and ensure freedom of trade carried on by participants in Indian markets.

ii) The Act was amended by **Competition (Amendment) Act, 2007** and again by Competition (Amendment Act), 2009.

iii) In India, **Competition Commission of India ("CCI")**, formulated under the Competition Act is a quasi-judicial and regulatory body entrusted with the task enforcement of the Competition Act, 2002. Apart from specific functions under the Competition Act, 2002 the CCI also has extra-territorial jurisdiction, inquiry into anticompetitive conduct, sector-specific regulatory work, competition advocacy,

power of appointment of professional and experts, and procedure for investigation (in terms of regulating its own procedure).

iv) Section 8 dealing with **composition of Commission** provides for a chairperson and not less than two and not more than six members which are to be appointed by Central Government. The CCI is vested with inquisitorial, investigative, regulatory, adjudicatory and also advisory jurisdiction. Vast powers have been given to the Commission and under Section 64, the Commission can frame regulations.

v) The **Competition Appellate Tribunal (COMPAT)** is another body entrusted with the responsibility of hearing and disposing of appeals against any direction or decision or order of the CCI. It also adjudicates on compensation claims arising from the findings of the CCI or its own findings on appeals against the CCI orders and passes orders on the recovery of compensation.

vi) Any person aggrieved by the order or decision of the CCI may prefer an **appeal** to the Competition Appellate Tribunal ('COMPAT') within 60 (sixty) days from the date of communication of such order or decision. The second and final appeal under Section 53T lies before the Supreme Court of India from the orders of the COMPAT within a period of 60 (sixty) days from the date of communication of the order by the COMPAT.

vii) CCI may **initiate an inquiry**:

a) On its own motion on the basis of information and knowledge in its possession, or

b) On receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association, or

c) On receipt of a reference from the Central Government or a State Government or a statutory authority

viii) The Act provides for Director General office as a separate investigative wing to assist the CCI. The DG looks into the complaints received from the CCI and submits all findings to it. DG is solely responsible for making enquiries, for examining documents and for making investigations into complaints. The DG is vested under the Act with powers of summoning of witnesses, examining them on

oath, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses etc.

ix) The Act in Section 49 (3) lays down the advocacy function of CCI and lays down that the CCI shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues. Section 32 of the Act grants the CCI extra-territorial jurisdiction over anticompetitive conduct which has an appreciable adverse effect on competition within India. Any anticompetitive activity taking place outside India but having an appreciable adverse effect on competition within India shall be subject to the application of the Competition Act.

x) Under s. 21 of the Act, any statutory authority can suo motto or on request of a party in the course of a proceeding before it can make a reference to CCI. CCI shall give its opinion within sixty days of receipt of such reference by such statutory authority. Under the provisions of the Act, the authority which made reference shall consider the opinion of the Commission and thereafter, give its findings recording reasons on the issues referred to in the said opinion by CCI. Section 21A in the same language provides for such reference by CCI to any statutory authority.

xi) The key provisions of the Competition Act include:

a) Section 3 of the Competition Act, 2002 dealing with anti-competitive agreements;

b) Section 4 of the Competition Act, 2002 which discusses abuse of dominance;

c) Section 5 and 6 of the Competition Act, 2002 dealing with the regulation of combinations.

xii) The term 'agreement', has been defined broadly in the Competition Act. It extends to a mere 'arrangement', 'understanding' or 'action in concert', none of which need be in writing or enforceable by law.

xiii) Section 3(1) of the Competition Act lays down that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. The Act prohibits an anti-competitive agreement and declares that such an agreement shall be void.

xiv) Section 3(3) of the Competition Act deals with the horizontal agreements as it covers the agreements between entities engaged in identical or similar trade of goods or provision of services. It also includes cartels. The section covers:

a) Agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise
b) Practice carried on by any association of enterprises or association of persons
c) Decision taken by any association of enterprises or association of persons

xv) Section 3(3) of the Competition Act enlists four broad classifications of horizontal agreements which are presumed to cause an appreciable adverse effect on competition (AAEC) in India.

a) Agreements regarding Prices
b) Agreements regarding Quantity/ Quality
c) Market Allocation
d) Bid Rigging

xvi) These four horizontal agreements are not presumed to have appreciable adverse effect on competition and excluded from the provisions of Section 3(3) of the Competition Act, 2002 provided they are entered into by way of joint ventures and increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

xvii) Cartels, by their very nature are secretive and thus it is difficult to find the direct evidence of their presence. The orders of the CCI clearly point that CCI relies on circumstantial evidence, both economic and conduct-based, to reach its decision on the existence of a cartel agreement.

xviii) The Act provides a definition for bid rigging and it covers agreements having effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding:

a) Collusive bidding: Agreement between firms to divide the market, set prices or limit production – involves, kickbacks and misrepresentation of independence
b) Bid Rotation
c) Bid Suppression
d) Complementary Bidding
e) Subcontracting arrangements
f) Market Allocation

xix) The Act gives wide discretion to CCI to frame the remedies to overcome the anticompetitive situation:

a) Declare Anticompetitive Agreements Void

b) Impose Heavy Penalties

1. Penalty can be up to 10% (ten percent) of the average turnover for the last three preceding financial years upon each of such persons or enterprises which are parties to bid-rigging
2. Cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or 10% (ten percent) of its turnover for each year of the continuance of such agreement, whichever is higher

c) Order the parties to Cease & Desist

d) Modification of agreements

e) Remedy Damage to reputation

f) Fix Individual Liability

g) Grant Interim orders

h) Any other order as CCI deems fit

xx) Who can file the information: Raising issues regarding anti-competitive behaviour for action by CCI under the act is called filing the information:

a) Any person, consumer or their association or trade association can file information before the Commission.

b) Central Govt. or a State Govt. or a statutory authority can also make a reference to the Commission for making an inquiry.

c) "Person" includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person.

xxi) What are the issues on which information can be filed?

a) The information can be filed on the issues like anti-competitive agreements and abuse of dominant position or a combination.

b) Class of consumers.

xxii) The fee -

a) Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,

b) Rupees 20,000/-(twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one Crores, and

c) Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.

5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015

i) The Act seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.

ii) Any public servant or any other person including a non-governmental organization may make such a disclosure to the designated agencies i.e. Central or State Vigilance Commission. The Time Limit for making any complaint or disclosure to the Competent Authority is seven years from the date on which the action complained against is alleged to have taken place.

iii) The Designated Agency cannot entertain any disclosure relating to any inquiry ordered under the Public Servants (Inquiries) Act, 1850 and Commissions of Inquiry Act, 1952.

iv) Similarly, the Amendment Act, 2015, The Bill prohibits the reporting of a corruption related disclosure if it falls under any 10 (ten) categories including information related to:

a) The sovereignty, strategic, scientific or economic interests of India, or the incitement of an offence

b) Records of deliberations of the Council of Ministers

c) That which is forbidden to be published by a court or if it may result in contempt of court;

d) A breach of privilege of legislatures;

e) Commercial confidence, trade secrets, intellectual property (if it harms a third party);

f) That relayed in a fiduciary capacity;

g) That received from a foreign government;

h) That which could endanger a person's safety etc.;

i) That which would impede an investigation etc.;

j) Personal matters or invasion of privacy.

However, if information related to (ii), (v), (vi), and (x) is available under the Right to Information Act, 2005, then it can be disclosed under the Act.

v) Any public interest disclosure received by a Competent Authority will be referred to a government authorised authority if it falls under any of the above prohibited categories. This authority will take a decision on the matter, which will be binding.

vi) The Identity of the Complainant must be included in the Complaint or the Disclosure. However the Designated Agency shall conceal the identity of the complainant unless the complainant himself has revealed his identity to any other office or authority while making public interest disclosure or in his complaint or otherwise. However, the Designated Agency can reveal the identity of the complainant in circumstances where it becomes inevitable or extremely necessary for the purposes of the enquiry.

vii) The Designated Agency may, with the prior written consent of the complainant, reveal the identity of the complainant to such office or organization where it becomes necessary to do so. If the complainant does not agree to his name being revealed, in that case, the complainant shall provide all documentary evidence in support of is complaint to the Designated Agency.

viii) Any person who negligently or with mala fide reveals the identity of the complainant shall be punished with imprisonment up to three years and fine not exceeding fifty thousand rupees.

ix) Similarly any disclosure made with mala fide and knowingly that it was false or misleading shall be punished with imprisonment up to two years and fine not exceeding thirty thousand rupees.

x) After receipt of the report or comments relating to the complaint, if the Designated Agency is of the opinion that such comments or report reveals either wilful misuse of power or wilful misuse of discretion or substantiates allegations of corruption, it shall recommend to the public authority to take appropriate corrective measures such as initiating proceedings against the concerned public servant or other administrative and corrective steps. However, in case the public authority does not agree with the recommendation of the Designated Agency, it shall record the reasons for such disagreement.

xi) While dealing with any such inquiry, the Designated Agency shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 in respect of matters like receiving evidence, issuing commissions, discovery and production of any document etc. Also, every proceeding before the Designated Agency shall be deemed to be a judicial proceeding under the Code of Criminal Procedure, 1973and Indian Penal Code.

xii) No obligation to maintain secrecy or other restrictions upon the disclosure of information shall be claimed by any Public Servant in the proceedings before the Designated Agency.

xiii) But, no person is required to furnish any information in the inquiry under this act if such information falls under the 10 (ten) categories mentioned before

xiv) It shall be the responsibility of the Central Government to ensure that no person who has made a disclosure is victimised on the ground that such person had made a disclosure under this act.

xv) If any person is victimised or likely to be victimised on the above-mentioned ground, he may contact the Designated Agency and the Designated Agency may pass appropriate directions in this respect. The Designated Agency can even restore status quo ante with respect to the Public Servant who has made a disclosure. Also, the Designated Agency can pass directions to protect such complainant.

xvi) If an offence under this act has been committed by any Head of the Department unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xvii) This Act extends to all the Companies as well. When any offence under this act has been committed by a company, every person who at the time of the offence was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence in this respect.

xviii) No court can take cognizance of any offence under this act save on a complaint made by the Designated Agency. No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate shall try any offence under this act. The High Court shall be the appellate authority in this respect.

Appendix 3: Electronic Procurement (e-Procurement)

(Refer Para 4.5)

1.0 Electronic procurement (e-procurement)

E-procurement is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods (supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. The Procurement Policy Division, Department of Expenditure, MoF, has vide Office Memorandum no: 10/3/2012-PPC dated January 9, 2014[66] prescribed mandatory procurement of tenders through the e-procurement mode for tenders valued above Rupees two lakh. (as per GFR, 2017, now this is mandatory for all tenders)

2.0 Service Provider

A service provider is engaged to provide an e-procurement system covering the following:

i) All steps involved, starting from hosting of tenders to determination of techno-commercially acceptable lowest bidder, are covered;
ii) The system archives the information and generates reports required for the management information system/decision support system;
iii) A helpdesk is available for online and offline support to different stakeholders;
iv) The system arranges and updates the Digital Signature Certificate (DSC) for departmental users; and
v) Different documents, formats, and so on, for the e-procurement systems are available.

3.0 The e-Procurement Process: In e-procurement, all processes of tendering have the same content as in normal tendering and are executed, once the necessary changes have been made, online by using the DSC as follows:

[66] http://eprocure.gov.in/cppp/sites/default/files/Instruction_contents/INST_DOC_NO_1/eProcurement090120 8.4.pdf

i) **Communications:** Wherever traditional procedures refer to written communication and documents, the corresponding process in e-procurement would be handled either fully online by way of uploading/downloading/emails or automatically generated SMSs or else partly online and partly offline submission. It is advisable to move to full submissions online. More details would be available from e-procurement service provider's portal. In e-procurement, the tender fee, EMD and documents supporting exemption from such payments are submitted in paper form to the authority nominated in the NIT, but scanned copies are to be uploaded – without which the bid may not get opened. In future, such payments may be allowed online also;

ii) **Publishing of tenders:** Tenders are published on the e-procurement portal by authorised executives of Procuring Entity with DSC. After the creation of the tender, a unique "tender id" is automatically generated by the system. While creating/publishing the tender, the "bid openers" are identified – four officers (two from the Procuring Entity and two from the associated/integrated Finance) with a provision that tenders may be opened by any two of the four officers. As in case of normal tenders, NITs are also posted on the Procuring Entity website. The downloading of the tender may start immediately after e-publication of NIT and can continue till the last date and time of bid submission. The bid submission will start from the next day of e-publication of NIT. In case of limited and PAC/ single tenders, information should also be sent to target vendors/contractors through SMS/email by the portal;

iii) **Registration of bidders on portal:** In order to submit the bid, bidders have to register themselves online, as a one-time activity, on the e-procurement portal with a valid DSC. The registration should be in the name of the bidder, whereas DSC holder may be either the bidder himself or a duly authorised person. The bidders will have to accept, unconditionally, the online user portal agreement which contains all the terms and conditions of NIT including commercial and general terms and conditions and other conditions, if any, along with an online undertaking in support of the authenticity of the declarations regarding facts, figures, information and documents furnished by the bidder online;

iv) **Bid submission:** The bidders will submit their techno-commercial bids and price bids online. No conditional bid shall be allowed/ accepted. Bidders will have to upload scanned copies of various documents required for eligibility and all other documents as specified in NIT, techno-commercial bid in cover-I, and price bid in cover-II. To enable system generated techno-commercial and price comparative statements, such statements should be asked to be submitted in Excel formats. The bidder will have to give an undertaking online that if the information/declaration/scanned documents furnished in respect of eligibility criteria are found to be wrong or misleading at any stage, they will be liable to punitive action. EMD and tender fee (demand draft/banker's cheque/pay order) shall be submitted in the electronic format online (by scanning) while uploading the bid. This submission shall mean that EMD and tender fee are received electronically. However, for the purpose of realisation, the bidder shall send the demand draft/banker's cheque/pay order in original to the designated officer through post or by hand so as to reach by the time of tender opening. In case of exemption of EMD, the scanned copy of the document in support of exemption will have to be uploaded by the bidder during bid submission;

v) **Corrigendum, clarifications, modifications and withdrawal of bids:** All these steps are also carried out online mutatis mutandis the normal tendering process;

vi) **Bid opening:** Both the techno-commercial and price bids are opened online by the bid openers mentioned at the time of creation of the tender online. Relevant bidders can simultaneously take part in bid opening online and can see the resultant bids of all bidders. The system automatically generates a technical scrutiny report and commercial scrutiny report in case of the techno-commercial bid opening and a price comparative statement in case of price bid opening which can also be seen by participating bidders online. Bid openers download the bids and the reports/statements and sign them for further processing. In case of opening of the price bid, the date and time of opening is uploaded on the portal and shortlisted firms are also informed

through system generated emails and SMS alerts – after shortlisting of the techno-commercially acceptable bidders;

vii) **Shortfall document:** Any document not enclosed by the bidder can be asked for, as in case of the traditional tender, by the purchaser and submitted by the bidder online, provided it does not vitiate the tendering process;

viii) **Evaluation of techno-commercial and price bids:** This is done offline in the same manner as in the normal tendering process, based on system generated reports and comparative statements;

ix) **Award of contract:** Award of the contract is done offline and a scanned copy is uploaded on the portal. More needs to be done in this regard. The information and the manner of disclosure in this regard must conform to Section 4(1) (b), 4(2) and 4(3) of the RTI Act to enhance transparency and also to reduce the need for filing individual RTI applications. Therefore, the award must be published in a searchable format and be linked to its NIT. Please see Para 8.5 for further details; and

x) **Return of EMD:** EMD furnished by all unsuccessful bidders should be returned through an e-payment system without interest, at the earliest, after the expiry of the final tender validity period but not later than 30 (thirty) days after conclusion of the contract. EMD of the successful bidder should be returned after receipt of performance security as called for in the contract.

Chapter 8: Monitoring Consultancy/ Other services Contract

8.1 Monitoring of the Contract

The ministry/department awarding the contract should be involved throughout in monitoring the progress of the assignment so that the output of the assignment is in line with the Procuring Entity's objectives laid down in the Contract. Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the contractor or to suspend payments till satisfactory progress has not been achieved. A Contract Monitoring Committee (CMC) shall be formed by the Procuring Entity to monitor the progress. The Procuring Entity should also designate a counterpart Project Manager with adequate technical qualification, managerial experience, and power of authority as the nodal person to interact with the consultant/ service provider's team. A system of reporting may be developed so that a statement covering all ongoing consultancies/ Services contracts may be submitted within the Department in detail and from each Department in summary form to the Ministry, 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)

8.2 Contract Monitoring Committee – (CMC)

The Procuring Entity 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. If considered appropriate, the Procuring Entity may select all or any of the members of CEC as members of CMC. The Procuring Entity may also include individual experts from the government/private sector/ educational/research institute or individual consultant/ service providers in the CMC. The cost of such members, if any, shall be borne by the Procuring Entity. 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.

For the assignments which are very complex and/or are of highly technical nature, the Procuring Entity may decide to appoint another qualified consultant/ service provider to assist the CMC in carrying out its functions. Monitoring the progress of Assignment entails following activities:

i) Issuing the notice to proceed;
ii) Review of the inception phase;
iii) Deciding on possible modifications to scope of work and issuing contract variations;
iv) Monitoring progress of assignment, Monitoring that key experts are actually employed; reports and their review including review of draft final report and the final report to ensure that assignment (whether time-based or lump-sum) is completed in accordance with the contract;
v) Billing, payment and monitoring the expenditure vis-à-vis progress;
vi) Resolving problems faced by consultants/ service providers and dealing with disputes and arbitration;
vii) Terminating services prior to the end of the contract; and
viii)Release of final payment and guarantees (if any) and closing the contract;
ix) Post contract evaluation.

8.3 Issuing Notice to Proceed - consultant/ service provider's Mobilisation

A notice to proceed is required to initiate consultancy/ other 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 for the Procuring Entity, if so required under the description of services. The Procuring Entity and the consultant/ service provider agree on the detailed content of inception, progress and final report.

Before issuing notice to proceed, the Procuring Entity and the consultant/ service provider should check the following:

i) Supervising/monitoring arrangements (including CMC) are in place;
ii) Procuring Entity's counterpart staff (including counterpart project manager) are nominated and are available;
iii) Facilities to be provided by the Procuring Entity as per the contract are ready for use by the consultant/ service provider;
iv) All parties involved in the assignment (users, security team and other relevant departments) are informed;
v) All JV members and key experts needed at the beginning of the assignment are effectively participating in the assignment as required by the Contract;
vi) Guarantees and advance payments are implemented;
vii) Data and background information are made available; and
viii) All authorisations (if needed) are provided.

8.4 Consultancy Services - 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 Procuring Entity, 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. Resulting from the factual study of ground situation by the consultants/ service providers, following issues will need resolution at end of the inception phase:

i) Overall Scope of Work;
ii) Work Plan and Staffing Schedule;
iii) Specific Terms of Reference;
iv) Access to Professional and Logistic Support;
v) Working Arrangements and Liaison

8.5 Reporting of Progress

The timing, nature, and number of reports that the consultant/ service provider should provide are normally contained in the Consultancy and other services contract. 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. 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. 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. These may be provided in a number of media and formats but normally will entail hard and soft copy versions. The production or acceptance of various reports is often used as a milestone for payments. 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. Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the CA, so that they can be addressed at the earliest opportunity.

8.6 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 completa. These situations could lead to claims and disputes.

8.7 Monitoring a Lump-sum Contract

As Lump-sum contract is based on output and deliverables, it 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. 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.

8.8 Unsatisfactory Performance

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. Based on the provisions of the contract, the Procuring Entity will advise the consultant/ service provider to take the necessary measures to address the situation. 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. If the consultant/ service provider fails to take adequate corrective actions, the Procuring Entity 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.

8.9 Delays

Consultancy and other services may be delayed for a variety of reasons. The consultant/ service provider should notify the Procuring Entity 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.

8.10 Issuing Contract Variations

8.10.1 The formal method of making and documenting a change in the Consultancy and other services contract is through a contract variation. 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. There are few Consultancy and other services contracts of any type that do not require a contract variation at one time or another. 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. Normally, the request for contract variation is prepared by the consultant/ service provider or Consultancy/ service provider firm and submitted to the Procuring Entity. If the variation entails an increase in the contract amount by more than 10% (ten percent), CA's (Competent Authority) prior approval is required. Post contract variation carried out in the form of an amendment shall be published by

the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry

8.10.2 To take care of any change in the requirement during the contract period of IT Projects as well, there could be situations wherein change 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 Procuring Entity due to lack of available options. Generally, the value of the change request should not be more than plus/minus 15 (Fifteen) per cent. The RfP document should contain detailed mechanism through which such change requests would be carried out. A 'Change Control Board' may be constituted by the Procuring Entity including experts from academics and industry to consider and approve the proposed change requests. The decisions of this board (both technical as well as financial) should be considered as final.

8.11 Substitution of Named Key Personnel

8.11.1 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:

i) Any replacement should be as well qualified or better qualified than the person being replaced;
ii) The remuneration should not be more than that was agreed upon for the person being replaced;
iii) The consultant/ service provider should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).

8.11.2 Substitution of key personnel during execution of consultancy contract:

i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.

ii) The following conditions should be incorporated in tender documents for procurement of consultancy services:

a) 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 30% of total key personal, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the procuring entity.

b) Replacement of first 10% of 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 personal, from the date of the replacement till completion of contract.

c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten percent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen percentage). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.

iii) 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.

8.12 Billing and Payments

8.12.1 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 Procuring Entity detailing the expenditures for personnel and out-of-pocket items. The Procuring Entity then reviews the documentation and forwards it to Paying Authority for ultimate payment. In normal practice, if any item needs further scrutiny before the Procuring Entity can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.

8.12.2 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 Procuring Entity 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.

8.13 Disputes and Conflicts

8.13.1 Disputes between the consultant/ service provider and the client may arise for a number of reasons. This could relate to technical and administrative matters such as interpretation of contract, payment for services or substitution of key experts – all of which should be dealt with promptly and amicably between the contracting parties in terms of contract provisions. They may be the result of delays prompted by weaknesses on the part of the consultant/ service provider or the Procuring Entity; by a lack of funds; by delays in getting key approvals, data, or information; or by causes beyond anyone's control such as natural disasters. They may be the result of deviations from the Scope of Work or work plan by the consultant/ service provider or out-of-course requests for deviations by the Procuring Entity.

8.13.2 All reasonable efforts should be made to avoid disputes in the first place; both parties should attempt to deal with problems as they arise on a mutually constructive basis. (This may include the repatriation of consultant/ service provider staff if necessary or a change in the personnel of the Procuring Entity's CMC) If this is not possible, GCC sets clear procedures for dealing with disputes. This entails provision of a notification of dispute by one party to the other, and provision for a mutual resolution at higher levels of authority within the consultant/ service provider and the Procuring Entity. Finally, if the dispute cannot be amicably settled between the consultant/ service provider and the Procuring Entity, then provision is made for arbitration under the Arbitration Clause. The award decried by arbitration tribunal is binding.

8.13.3 Arbitration and dispute resolution

i). During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.

ii). Arbitration /court awards should be critically 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 in a routine manner, 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. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

iii). 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 on 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.

iv). Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result

of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with. (v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open an escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity

v). The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity[41].

8.13.4 **Arbitration Awards**

i) In cases where the Ministry/ Department has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by the Ministry/ Department to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to the Ministry/ Department should the subsequent court order require refund of the said amount.

ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be

[41] 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

used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.][12]

8.14 Force Majeure

8.14.1 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). 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. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. 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.

8.14.2 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.

8.15 Terminating Services Prior to End of Contract

8.15.1 At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the Consultancy and other services assignment. This may be for various reasons, for example:

[42] New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

i) **Termination due to External factors:** External factors (like natural disasters) which are beyond the control of the consultant/ service provider or the Procuring Entity;

ii) **Termination for convenience:** The Procuring Entity may also terminate a contract for convenience for reasons like shortage of budget;

iii) **Termination due to breach of contract:** Failure/ inability of one party or the other.

8.15.2 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.

8.15.3 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 Procuring Entity of any legitimate outstanding fees and costs to the consultant/ service provider, and the payment of legitimate costs to wind-up the Consultancy/ other service team(unless the termination was occasioned by the default of the consultant/ service provider).

8.15.4 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.

8.16 Concluding the Assignment

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.

8.17 Monitoring of Consultancy Contracts – Risks and Mitigation	
Risks	***Mitigation***
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.	The Procuring Entity 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.
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.	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, CA should review justification for extension of the contract. One of the ways to prevent cost overruns in time based contract is to require Procuring Entitys acquire contract management capacity to manage consultants contract before contract is signed. It is Procuring Entity'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. Procuring Entity must careful authorise mobilisation and demobilisation of key experts, and examine the time sheets and other reimbursable expenditures.

Chapter 3: Types of Contracts and Systems of Selection of consultants/ service providers

3.1 Types of Contracts

There are 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.

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:

i) Lump sum (Firm Fixed Price) contract;
ii) Time based (Retainer-ship) contracts;
iii) Percentage (Success Fee) contract;
iv) Retainer-ship cum Success fee based contract;
v) Indefinite delivery contract.

However, in case of Procurement/ Outsourcing of other (non-consulting) Services depending on the nature of services, can be either Lump-sum contracts, Time-based (Retainer-ship) contracts, or unit (item/ service) rate (say Taxi Service on per Km basis) based contract (as in case of Goods and Works) – or a mix of these. In certain uncertain but regularly needed services, indefinite delivery contracts, based on time or unit (item/ service) rates may be appropriate. Other types of contracts are not usual in procurement of other services.

3.2 Lump Sum (Firm Fixed Price) Contract

3.2.1 The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the Procuring Entity 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. 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. 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.

3.2.2 **Lump Sum Contracts - Risks and Mitigations**	
Risk	***Mitigation***
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.	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.
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.	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.

3.3 Time-Based (Retainer-ship) Contract

3.3.1 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, but not so in other services) 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 period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. 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.

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.

3.3.2 **Time-Based Contracts - Risks and Mitigations**	
Risk	***Mitigation***
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.	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.
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.	Contracts need to be closely monitored and administered by the 'Procuring Entity' 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.
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.	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, CA should review justification for extension of the contract.

3.4 Percentage (Success/ contingency Fee) Contract

3.4.1 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/ service providers who have quoted the lowest percentage while the notional value of assets is fixed.

Due to Risks and mitigations discussed below, these contracts are commonly used for appropriate architectural services; procurement and inspection agents.

3.4.2 **Percentage Contracts - Risks and Mitigations**	
Risk	***Mitigation***
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.	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.
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.	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.
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.	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.

3.5 Retainer and Success (Contingency) Fee Contract

3.5.1 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.

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 organisational restructuring/ change.

3.5.2 **Retainer-ship and Contingency Fee Contracts - Risks and Mitigations**	
Risk	***Mitigation***
All Risks as applicable to both Percentage Contracts and Time Based contracts are encountered in this case	Same mitigation strategies as in both Percentage and Time Based contracts may be adopted in this case.

3.6 Indefinite Delivery Contract (Price Agreement)

3.6.1 These contracts are used when Procuring Entity need to have "on call" specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/ service provider. The Procuring Entity 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.

These 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.

3.6.2 **Indefinite Delivery Contracts - Risks and Mitigations**	
Risk	***Mitigation***
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.	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 'Procuring Entity' to ensure that the there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit. A system of monthly reporting of payouts and quantum of work achieved by the consultant/

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations	
Risk	***Mitigation***
	service provider to CA 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 CA.
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.	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.
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.	Contracts need to be closely monitored and administered by the 'Procuring Entity' 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.
Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.	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, CA should review justification for extension of the contract.

3.7 Systems of Selection of service providers

3.7.1 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 Therefore, normally done in a two stage process. In the first stage,

likely capable sources are shortlisted, if need be through an 'Expression of Interest' (EoI) through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. 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.

3.7.2 The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity 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 take into account the likely field of Bidders.

3.7.3 The nomenclature of various selection methods below is in line with generally prevalent nomenclature and Therefore, varies slightly from the terms used in the 2006 version of Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants'.

i) Price based System - Least Cost Selection (LCS);
ii) Quality and Cost Based Selection (QCBS);
iii) Direct Selection: Single Source Selection (SSS);

3.7.4 Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis as in procurement of Goods/ works for technically responsive offers. Under very special circumstances Single Source Selection may also be used. However, in highly technical and complex services, where quality is

important (say in studies like seismic surveys, airborne data acquisition etc) where use of QCBS system appears to be called for, it may be better handled as a consultancy contract.

3.7.5 It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid[17]. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

1) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
2) The qualification criteria were not unduly restrictive; and
3) Prices are reasonable in comparison to market values[18]

3.8 Price based System - Least Cost Selection (LCS)

3.8.1 In this method of selection, consultants/ service providers submit both a technical proposal and a financial proposal at the same time. Minimum qualifying marks for quality of the technical proposal are prescribed as benchmark (normally 75 (seventy five) out of maximum 100 (hundred)) and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. *Alternatively, since in LCS selection, technical offers do not require be ranked (or adding of weighted technical score to financial score -- as in QCBS selection), it would suffice in appropriately simple cases (please refer to para 6.2.2), if the evaluation criteria is only a fail/ pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, a simplified evaluation criteria may also be used where instead of a marking*

[17] As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

[18] Notified under para 11.8 vide OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

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. 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. 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. *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.* In Finance Ministry's 2006, 'Manual of Policies and Procedure of Employment of consultants/ service providers', this is called QCBS, which is not the generally prevalent nomenclature. *(Rule 193 of GFR 2017, also see para 6.9.1)*

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 works) where well established practices and standards exist. 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.

3.8.2 **Least Cost Selection - Risks and Mitigations**

Risk	*Mitigation*
Technical criteria may not be relevant to realization of quality of assignment.	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.
Marking Subjectivity: The scheme of marking or its application may be	It is important to lay down as objective a scheme of marking as possible. Cases

3.8.2 Least Cost Selection - Risks and Mitigations	
Risk	*Mitigation*
subjective.	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. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9 Quality and Cost Based Selection (QCBS)

3.9.1 In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal will be prescribed and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. During evaluation of technical proposal, quality score is assigned out of the maximum 100 (hundred) marks, to each of the responsive bids, as per the scheme laid down in the RfP. The consultants/ service providers who are qualifying as per the technical evaluation criteria are considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers and other financial offers are returned unopened to bidders. 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. The weight given to the technical score may not be confused with the minimum qualifying technical score (though they may in some case be equal). 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, taking into account 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.* In Finance Ministry's 2006 'Manual of Policies and Procedure of Employment of consultants', this is called CQCCBS, which is not the generally prevalent nomenclature. 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. Table 3 provides a suggestive weighting for QCBS. *(Rule 192 of GFR 2017, also see para 6.9.2)*

Table 3. A suggestive weighting of scores for QCBS

Description	Remarks	Quality/Cost Score Weighting (%) in QCBS
High complex/downstream consequences/specialised assignments	Use QCBS with higher technical weightage	80/20
Moderate complexity	Majority of cases will follow this range	75-65/ 35-25
Assignments of a standard or routine nature such as auditors/procurement agents handling the procurement	Use of LCS is appropriate	60-50/40-50

3.9.2 QCBS - Risks and Mitigations

Risk	*Mitigation*
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 Procuring Entity to monitor the assignment.	Selection of QCBS should be justified and applied only under circumstances mentioned above.
Weightage of Technical: Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
Technical criteria may not be relevant to realization of quality of assignment.	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

3.9.2 QCBS - Risks and Mitigations	
Risk	***Mitigation***
	able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	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. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.10 Direct Selection: Single Source Selection (SSS)

3.10.1 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 Procuring Entity. 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, also see para 6.9.3)* The selection by SSS/ nomination is permissible 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;

iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;

iv) 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;

v) 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.

Procuring Entity 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.

3.10.2 All works/purchase/ consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-

a) The Secretary, in case of ministries/departments.
b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
c) The Chief Executive of the organisation where such a managing body is not in existence.

1. The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
2. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

3.10.2 **SSS - Risks and Mitigations**	
Risk	***Mitigation***
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 Procuring Entity 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.	Full justification for single source selection should be recorded in the file and approval of the competent authority (subject to SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity and the required consultancy/ other services are not split into smaller sized procurement

	to avoid competitive processes.
Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.	Procuring Entity 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.

3.11 Fixed Budget – based Selection (FBS) for consultancy services :

3.11.1 GFRs 2017 provide 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 hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budged in the tender document itself. FBS may be used when :

(i) the type of consulting services required is simple and/or repetitive and can be precisely defined; and

(ii) the budget can be reasonable estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and

(iii) the budget is sufficient for the consultant to perform the assignment.

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

(i) 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.

(ii) In cases of repetitive or multiple assignments, by empanelling suitable quality 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 procuring entity.

1.11 Principles for Public Procurement of Services

1.11.1 Other principles of Public Procurement as mentioned in 1.6 above are also equally applicable to Procurement of consultancy/ other services. To ensure value for money during procurement of consultancy and other services, the following additional principles shall be considered:

i) Services to be procured should be justifiable in accordance with Para 1.10 above;

ii) In case of Consultancy Services - well-defined scope of work/ Terms of Reference (ToR – description of services) and the time frame, for which services are to be availed of, should be determined consistent with the overall objectives of Procuring Entity. In other (non-consultancy services) Activity Schedule (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 Procuring Entity;

iii) Equal opportunity to all qualified service providers/ consultants to compete should be ensured;

iv) Engagements should be economical and efficient. (*Rule 182 of GFR 2017);*

v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and,

vi) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10.1 above

1.11.2 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.

However procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. These are detailed in Chapter 9.

(Rule 179 of GFR 2017)

1.12 The Law of Agency – applicable to Procurement of Consultancy and other Services

Laws which are applicable to Public Procurement of goods equally apply to Procurement of Consultancy and other services. These are detailed in Appendix 2. Legally speaking consultants/ service provider would be an Agent of the Principal/ Client/ Procuring Entity – Procuring Entity, to carry out the service/ assignment 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/ Procuring Entity and Agent relationship between Procuring Entity and such consultant/ service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.13 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.[12]. 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-FPC dated 30th November, 2011[13] (and 05th March 2012[14]) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

1.14 Public Procurement Cycle

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

i) Preparation of Concept Paper/ Procurement Proposal and obtaining in principle approvals;

ii) Preparation of the ToR (in case of consultancy services)/ Activity Schedule(in case of other/ non-consultancy services), cost estimate and seeking administrative and budgetary approval;

[12] http://cic.gov.in/GuidelinesOnProActive.pdf

[13] http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/pub_tender_enq_cppportal.pdf

[14] http://eprocure.gov.in/cppp/sites/default/files/instruction_contents/INST_DOC_NO_7/OM_DoE_5thMarch2012.pdf

iii) In case of Procurement of Consultancy Services - Short list of consultants - EoI formulation, publication, receipt of proposals and evaluation;

iv) Preparation and issuance of the RfP; Receipt of proposals; Evaluation of technical proposals: consideration of quality; Evaluation of financial proposals; Selection of winning proposal; Negotiations and award of the contract to the selected firm; and

v) Monitoring of Assignments.

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