

5.7.6 Framing of Contract

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

- i) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/ integrated Finance and approved by CA. The terms of contract must be complete, precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is price variation in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Associated/ integrated Finance.
- ii) All contracts shall contain a provision for
 - a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 - b) A warranty clause/ defect liability clause should be incorporated in contracts for plant and machinery and works, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/ services;
 - c) All contracts for supply of goods should reserve the right of the government to reject goods which do not conform to the specifications;
 - d) Payment of all applicable taxes by the contractor; and
 - e) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the government at any time on the expiry of six months' notice to that effect.
 - f) How the appointed day or day of starting of the work shall be determined.

iii) Standard forms of contracts should be invariably adopted, except in following cases:

- a) ⁴³A Ministry or Department may, at its discretion, make purchases of value up to Rupees two lakh and fifty thousand by issuing purchase orders containing basic terms and conditions
- b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and
- c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (twenty-five) lakh and above, and of all rate and running contracts entered into by civil departments of the government should be sent to the Accountant General.

5.7.7 Procurement Records

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

⁴³Rule 255 (iv) (a), GFR 2017

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

5.8 Evaluation of Bids and Award of Contract - Risks and Mitigations	
Risk	Mitigation
or the other. Although there is a standard contract form in the bid documents, the contract may be drafted in a fashion to favour or discourage the successful bidder.	signing. The contract should be strictly as per the bid conditions and accepted offer.
<p>Anti-competitive practices: Bidders, that would otherwise be expected to compete, secretly conspire to frustrate the Procuring Entity's attempts to get VfM in a bidding process. Anti-competitive conspiracies can take many forms. Sometimes the officers involved in procurement may be part of such collusion.</p> <p>Bid coordination: The bidders collude to the quote same or similar rates that are much higher than the reasonable price to force the Procuring Entity to settle the procurement at exorbitant prices.</p> <p>Cover bidding: Cover bidding is designed to give the appearance of genuine competition by way of supporting bids for the leading bid-rigger.</p> <p>Bid suppression: Bid suppression means that a company does not submit a bid for final consideration in support of the leading bid-rigger.</p> <p>Bid rotation: In bid-rotation schemes, conspiring firms continue to bid but they agree to take turns being the winning (i.e., lowest qualifying) bidder in a group of tenders of a similar nature.</p> <p>Market allocation: Competitors carve up the market and agree not to give competitive bids for certain customers or in certain geographic areas.</p>	<p>These strategies, in turn, may result in patterns that procurement officials can detect and steps can be taken to thwart such attempts. Such anti-competitive activities come under the purview of the competition law, where there is provision of stringent penalties. Regular training should be held for officers involved in procurement to detect and mitigate such practices and also use of the competition law against such bidders.</p>

6.7 Closure of Contract

6.7.1 Completion of Contract

The contract is not to be treated as completed until a Defects Liability Certificate (DLC) has been issued. There will be only one DLC. It will be issued when the contractor has completed all his obligations under the contract. While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/ final payment. Before the bank guarantee is released a "no claim certificate" may be taken from the contractor as per the format given in Annexure 7. At least in large contracts (above Rs. 25 (twenty-five) lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across departments involved in the execution of the contract:

against BG.]⁴⁶

6.11 Breach of Contract, Remedies and Termination

6.11.1 Breach of Contract

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to complete the Work within stipulated time. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor, giving two weeks' notice, reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

If termination takes place because of a fundamental breach/ insolvency on the part of the contractor, the engineer shall issue a certificate for the value of work done, deducting from the amounts in respect of: (i) advance payments; (ii) any recoveries; (iii) taxes as due; and (iv) percentage to apply to the work not completed as indicated in the contract data. If the total amount due to the procuring entity exceeds that due to the contractor, the difference will be a debt payable to the procuring entity. The CA may terminate a contract in the following cases. The Procuring Entity is then free to take over the site and complete the works himself or with another contractor and use the contractor's materials, equipment, temporary works as he/ they think proper.

6.11.2 Cancellation of Contract for Default

⁴⁶New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD Issued by Department of Expenditure dated 29.10.2021.

Without prejudice to any other remedy for breach of contract, such as removal from the list of enlisted contractor, by written notice of default sent to the Contractor, the contract may be terminated in whole or in part, if the contractor has:

- i) has seriously or repeatedly breached the contract, including
 - a) failure to complete the work within the time period(s) specified in the contract, or any extension thereof granted;
 - b) failure to obey instructions in relation to his progress or defective work, material or plant;
 - c) breach of the prohibition against sub-contracting
 - d) Failure to supply sufficient and suitable constructional plant, temporary works, labour and material as proposed in the work programme;
 - e) Substantial suspension of work for more than the specified days without authority from the engineer and failure to proceed with the work within the specified days of receipt of notice from the engineer
 - f) Failure to comply with the requirements regarding JVs
- ii) committed fraud
- iii) If the contractor fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
- iv) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - a) Forfeiture of the performance security;
 - b) Upon such terms and in such manner as it deems appropriate, taking over the site and to complete the works himself or with another contractor (risk Purchase) and use the contractor's materials, equipment, temporary works as he/ they think proper. In small value contracts, instead of Risk Purchase, a fixed percentage recovery may be provided in the SBD; and
 - c) However, the contractor shall continue to fulfil the contract to the extent not terminated.

Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

6.11.3 Termination of Contract for Insolvency

Chapter 6: Execution of Contract

If the contractor becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the contractor, without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

6.11.4 Termination of Contract for Procuring Entity's Failure or Convenience

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the contractor for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will become effective. This is not Procuring Entity's legal right— the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the contractor may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract. If termination occurs because of Procuring Entity's convenience or a fundamental breach on his part, the engineer will certify the value of works executed, value of any materials lying at site, reasonable cost of removal of equipment, repatriation of project staff, cost of protecting and securing the works and deducting from it: (i) pending advances; (ii) other recoveries; and (iii) taxes as due.

Chapter 7: Registration/ Enlistment of Contractors and Governance Issues

7.1 Contractor Relationship Management

Contractor Relationship Management comprises the following functions:

- i) Ensuring compliance of contractors to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
- ii) Holiday listing; removal from the list of enlisted contractors and banning/ debarment of firms; and
- iii) Development of new sources and registration/ enlistment of contractors.

7.4 Development of New Sources and Registration/ Enlistment of Contractors

7.4.1 The terms 'enlistment' and 'registration' may be differentiated as follows: –

- i) **Registration:** Simply registering the contractor, without any verification.
- ii) **Enlistment:** Including the name of the contractor in the list of after verification of credentials.

7.4.2 **Registration:** All the Ministries/Departments shall register the prospective contractors on their e-procurement portal or in the CPPP (in case they do not have their own e-procurement portal) before submitting their bids. The contractor may be an Individual, Sole proprietorship firm, partnership firm, limited liability partnership, private or public limited company. For registration, the Ministries/Department/CPSUs shall capture *at least*– (i) Name of contractor, (ii) Address and Contact details, (iii) Permanent Account Number (PAN), (iv) Details of digital signature certificate (DSC) and (v) GSTIN. Depending on the requirement of respective procurement portal, the Ministries/Departments can capture any other information, as may be considered necessary.

7.4.3 **Enlistment:** Some Departments such as Central Public Works Department (CPWD) and Military Engineering Services (MES) are enlisting the contractors after

verification of their credentials. Such enlistment is used by CPWD for obtaining bids for small value tenders i.e. up to Rs. 20 crores. For the tenders above Rs. 20 crores any contractor even if not enlisted can participate in the tenders issued by the CPWD. It is expected that Ministries/Departments will also develop their own enlistment process, as has been done by CPWD, Ministry of Railways (MoR) and Ministry of Road Transport & Highways (MoRTH) to reduce the time required for verification of credentials of the contractors after opening of the bids. The lists of such enlisted contractors can be used by any Ministry/Department/CPSU.

7.4.4 The Ministries/Departments will also share the information of registered and enlisted contractors with each other through the Central Public Procurement (CPPP). The Ministries/Departments will also ensure that whenever a contractor is debarred, the information regarding the same is made available immediately to all the Ministries/Departments through the CPPP. The reasons for the debarment and order of such debarment may also be displayed on the CPPP. The National Informatics Centre (NIC)/ Ministry of Electronics and Information Technology (MeitY) shall make appropriate changes in the CPPP so that each contractor can be uniquely identified by PAN. All the Ministries/ Departments may take cognizance of the information regarding debarment of contractors and use it as an input for the decision making process as per their own procurement policies.

7.4.5 Ministries/ Departments with a significant volume of procurements may follow their own policies and procedures for enlistment of contractors, if already existing. The policies and procedures for enlistment described below is for guidance of Ministries/ Departments, who do not have their own, laid down policies/ procedures for enlistment. The Ministry/ Department shall notify the authorities competent to deal with the applications and grant enlistments, along with their jurisdictions. The appellate authority shall be at least one level above the registering authority or as designated by the Ministry/ Department.

7.4.6 Categories for Enlistment

In case of procurement of works, the Administrative Department shall enlist firms as contractors of goods in different types/ categories of works (Civil, Electrical, Horticulture, Furniture, Nursery etc). The contractor may be a Private, Partnership, Pvt Ltd, Corporate, PSU or a Joint Venture company.

7.4.7 Class of Enlistment (Tendering Limits)

Enlistment should be done by Class of the firms (Grade A, B, and so on) on their capability for executing contract orders of different monetary limits in the relevant category of requirements. The monetary limits should be carefully fixed keeping in view the banker's reports, capacity and capability of the firm and other financial information indicated in the balance sheets, profit and loss statements:

(A sample classification - Source CPWD website)

Class	Tendering Limit	Class	Tendering Limit
Class-I (Super)	Rs 500 crore	Class-II	Rs 5 crore
Class-I (AAA)	Rs 200 crore	Class-III	Rs 1.5 crore
Class-I (AA)	Rs 100 crore	Class-IV	Rs 60 lakh
Class-I (A)	Rs 50 crore	Class-V	Rs 15 lakh
Class-I	Rs 20 crore		

7.4.8 Procedure for Enlistment: Enlistment of contractors should be done by any Ministry/ Department in case it desires to enlist contractors for works which are exclusively needed by it by keeping fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems, past performance, after-sales service facilities, financial background, and so on, of the contractor/ service provider(s):

- i) Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;
- ii) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new contractors can be obtained from the response received from contractors, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller

meets, various publications of BIS, trade journals, and so on. The e-procurement portal does pre-registration of contractors online. Such data can be a source of information on prospective contractors;

- iii) New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions. For any larger scale or critical enlistment of contractors, Procuring Entity should call for EOI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EOI have been detailed in Chapter 3;
- iv) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of enlisted contractors, besides any other penalty or more severe action as deemed fit; and
- v) Along with the new/ renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.
- vi) **Eligibility**
 - i) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;
 - ii) Contractors should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements
 - iii) Firm, against whom punitive action has been taken, shall not be eligible for re-enlistment during the currency of punitive action. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-Enlisted/ banned firms;
- vii) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The enlistment application form, duly filled-in,

when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Enlistment of contractors should be done with the approval of CA.

- viii) In cases where the firm is not considered capable and enlistment cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re-verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- ix) Enlistment should be for specific category of works;
- x) It should be mentioned in the letter of enlistment that the enlistment is valid for a period of three years and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of enlistment is not a matter of right and Procuring Entity reserves the right not to extend such enlistment without assigning any reason;
- xi) All Enlisted contractors should be allocated a unique enlistment number. Once the firms are enlisted, a circular shall be issued by the enlistment authority indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted;
- xii) Performance and conduct of every enlisted contractor is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of enlistment

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(after giving due opportunity to the contractor to make a representation) if they fail to abide by the terms and conditions of the enlistment or fail to execute contracts on time or do substandard work or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest;

- xiii) Procuring Entity shall retain its option to reassess firms already enlisted, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as enlisted contractors for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the enlisted contractors list;

7.6.4 Capacity of Contractors

Contractors involved in construction or development of large projects for the Government needs to have tremendous capacity to deliver projects on time and cost. Firms are often unable to deliver contracts on time in cases where conditions precedent is met by the Government agency. There are several other reasons for project delays or escalation of costs:

- i) Poor Governance within the firm

Chapter 7: Registration of Contractors and Governance Issues

- ii) Financial mismanagement
- iii) Incompetent project leadership
- iv) Lack of competence in the project team
- v) Inability to use technology for project management.
- vi) Poor process management and standardisation

Financial management by the contractor is an equally critical factor. Mobilising finances and resources for several large projects on which the firm is working on poses significant managerial challenge. Hence, ensuring that the eligibility criteria in fixing the minimum turnover, net worth, profits and bidding capacity in relation the project size (simultaneous exposure in other large projects) becomes a sine qua non for successful execution of projects. There is need to ensure that contracting firms adopt appropriate management standards. Adoption of ISO 21500:2012 could be specified in the RFQ conditions when inviting tenders. Third party assessment of the capabilities listed in this standard could be called for.

Contracting firms involved project construction need qualified, trained personnel and managers to plan and construct projects in time, cost and quality. It is important to ensure that contractor organisations have qualified/ certified project management professionals at the time of commencement of works on awarded contracts. Certifications such as PMI-PMP/PRINCE2-practitioner/CPMP etc., besides experience, may be specified in the contract conditions for the key staff of the field

7.6.6 Structuring contracts for timely completion

- i) *Optimal sharing of risks* has been a balanced way of ensuring that the time and costs of completion of a project do not go way off the mark. Structuring contract clauses keeping in mind the principle of '*responsibility for each risk shall be with the party best equipped to handle it*' has enabled contracts to lead to lower risk perception by bidders and as a result offer better prices. Contract clauses need to be further screened using this principle.
- ii) *Scope & Design creep* are widely stated causes for project delays. Changes in scope or design midway or at start cause time and cost variations. It may be therefore essential to consider options thoroughly and spend time on designs exhaustively at the time of DPR preparation and before procurement.
- iii) *Timely release of payments* to contractors raises the confidence level of contractors to mobilise more resources for early completion. DMRC's practice of releasing 80% of the Interim Payment Certificates (Bills) within 14 days of claim by contractor and the rest within 28 days of certification by the Engineer. Building these payment clauses into contracts raises contractor confidence, reduces project risk perception and enables better prices.
- iv) Embedding a *fair price variation clause* in contracts that mimics the market forces of escalation/reduction would lower risks to contractors and to the public organisation as well. FV clauses would vary from contract to contract, depending the structure of materials and costs.
- v) *Dispute Resolution Board (DRB)* may be created by express consent of the procuring entity and the contractor to monitor the project execution at various

stages of completion. This is a conciliation forum to resolve disputes amicably. The primary function of DRBs is to monitor the progress of the project with respect to contract requirements. In case of any non-compliance with respect to the contract, the Board immediately interferes and suggests ways to resolve the dispute. DRB mechanism may be embedded in contracts.

- vi) *Encourage institutional arbitration:* Settlement of disputes through Institutional arbitration is better than ad-hoc arbitration. Institutional arbitration provides an established format with a proven record ensures impartial decision-making and adherence to pre-established rules and procedures.

7.6.7 Aligning the Interest of The Stakeholders

- i) The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects / works in a qualitative manner within approved cost. A balanced framework and work culture, where risk and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (Including public recognition), linked with measurable parameters of outcome / output, can help align the interests of stakeholders. An ethics based regime, where integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.
- ii) Public authorities may devise strategies to provide incentives to contractors /concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely / quality completion of the projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early / timely and quality completion of the projects. The practice of mentioning the names of the contractor and the project in charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project In-charge with the life of the project.
- iii) "Coming together is a beginning; keeping together is progress; working together is success". It is an accepted fact that the success of any project is dependent on a well-coordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of

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all the stakeholders need to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

**No.F.1/1/2021-PPD
Government of India
Ministry of Finance
Department of Expenditure
Procurement Policy Division**

264-C, North Block, New Delhi.
29th October, 2021.

Subject: General Instructions on Procurement and Project Management

It has always been a concern and challenge for the Government and its agencies to execute public projects on time, within the approved cost and with good quality. As the Government strives to step up the pace of economic development, the role of procedure and rules, and the incentives and disincentives they create, warrants careful examination.

2. The Central Vigilance Commission (CVC) and the Comptroller & Auditor General (CAG) are among the institutions which have, at various times, had occasion to comment on procurement and project management. Taking cognizance of these issues, CVC issued a Concept Paper on Alternative Procurement Strategy suggesting various reforms. Later after elaborate consultations with various stakeholders and a reform workshop held on 18.12.2020, CVC prepared Draft Guidelines on "Reforms in Public Procurement and Project Management". The draft guidelines inter alia stated: "Endeavour should be to explore the possibility of employing alternative procurement methods and other emerging trends apart from regularly used methods of procurement".

Separately, the CAG held a workshop on 27th February, 2020, soliciting ideas to improve procurement and project management. In that workshop, the then CAG himself observed: "It is also important to examine the information available with the decision maker at the time of taking the procurement decision. Post facto wisdom is easy and costs of indecision high". He hoped that the "focus of the presentations would be on discussing the challenges faced in procurement, especially that of adhering to the L1 requirement and related quality issues and new mechanisms/ strategies of procurement to overcome these challenges".

The National Institution for Transforming India (NITI) Aayog also prepared in August, 2020 a detailed paper entitled "Indian Public Procurement: Alternative Strategies and Way Forward" with various proposals.

3. A common theme arising in all these deliberations was a need to improve procurement and project management rules and procedures, to update them to present day needs, and empower those implementing projects to take better decisions, while adhering to probity and fairness. The fact that two premier institutions overseeing probity and accountability and India's premier policy think-tank felt the need to improve public procurement and project management procedures indicates the importance of the issue.

4. The Draft Guidelines prepared under the aegis of the CVC provided a sound platform for initiating reforms for empowering executing agencies and officers to take effective decisions in public interest, not only without favour but also without fear. These Draft Guidelines were considered by the Committee of Secretaries, and it was decided that the Department of Expenditure (DoE) would consider and issue guidelines, after soliciting and incorporating comments from Ministries/ Departments. Comments were solicited from all Ministries/ Departments and after due and detailed consideration of the comments received, instructions as contained in the subsequent paragraphs are being issued for compliance. While the primary source of these instructions is the draft guidelines prepared by the CVC, the views expressed in the CAG's workshop, by NITI Aayog, and in other comments received have also been duly considered and incorporated wherever appropriate.

5. The instructions below are "general instructions" within the meaning of Rule 6(1) of the GFR. They shall prevail in case of any general or case-specific conflict with the existing provisions of the Manual for Procurement of Goods, 2017, Manual for Procurement of Consultancy and other Services 2017, Manual for Procurement of Works 2010 or any other instruction issued by DoE in the past. For the purpose of these instructions:

- (i) Instructions containing 'may' are to be considered desirable or good practices which procuring entities/ project executing agencies are encouraged to implement but not mandatory.
- (ii) Instructions containing 'should' are required to be followed in general. However, there may be circumstances where it may not be practical/ desirable to implement them. In such cases, the concerned officer/ agency may deviate by recording reasons in writing for not implementing the same.

- (iii) Instructions containing 'shall' are mandatory; any deviation shall require relaxation of rules from the DoE (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).
- (iv) Instructions containing "allowed" indicate an optional course of action to be decided upon on merits.
- (v) "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" means Central Government Ministries/ Departments, Attached/ Subordinate bodies including Autonomous Bodies or Central Public Sector Enterprises (CPSEs) (etc) executing projects/ works.
- (vi) "Public Authority" means the client organization, which may be asking a "Procuring Entity" or "Project Executing Authority" or "Project Executing Agency" to execute a project or work on their behalf. For example, in case a University executes the works through Central Public Works Department (CPWD), then the said university will be the public authority and CPWD will be the Procuring Entity or Project Executing Authority or Project Executing Agency. (The public authority and the project executing authority may also be the same.)

6. Feasibility Study/ Ground Survey: Before undertaking a project Feasibility study/ Preliminary Project Report (PPR) may be prepared by the Project Executing Agency as prescribed in Para 2.2.1 of the Manual for Procurement of Works 2019 (*hereinafter called Manual*). A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

7. Detailed Project Report (DPR):

7.1 As prescribed in Para 2.4 of the Manual, once the project is considered viable and the competent public authority gives approval, a DPR/ Detailed Estimate should be prepared with due care and accuracy, using latest technological tools collecting all relevant ground information including consultation with the field units, wherever applicable.

7.2 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as "contractor") and possible risks and mitigation measures. In the case of very large projects such presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

7.3. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

7.4. Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case maybe.

8. Availability of Land and Statutory Clearances:

8.1 It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing

authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.

8.2 Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Only such land, non availability of which, will prevent essential components of work from execution, should be insisted upon.

8.3 Time taken in grant of statutory and other clearances also contributes to the time and cost of public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and closely monitor the progress.

9. Pre-Tender activities:

9.1 Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/ laws, including byelaws, such as local authorities.

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

9.3 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed

periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

10. Tender documents:

10.1 The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor, timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/quality of the work, dispute resolution. Provisions/clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & soil investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. Model Tender Documents issued by the DoE may be used, with due customisation.

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

10.3 Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.

10.4 Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.

10.5 Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.

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

10.7 Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.

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

10.9 Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.

10.10 Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

11. Project Management

11.1 The quality of project works significantly depends on supervision and monitoring. For completion of the projects within the stipulated time and cost and with specified quality standards, periodical review should be done by various levels of the officers.

11.2 Information Technology (IT) enabled project management systems can help in improving efficiency, transparency and aid faster decision making in execution of projects. These systems may be used for maintenance of records for the progress of work (including hindrance register), variations, etc., wherein reasons for delays are also to be captured on real time basis. Such

systems may be used for capturing progress and quality of work, site records/ photographs/ videos etc. including geo tagging.

11.3 Wherever applicable, the role of the Project Management Consultant (PMC) should be clearly defined in the contracts. Deployment of the PMC does not absolve the project executing authority of the responsibility to supervise the quality and timelines of the project.

11.4 The credentials and deployment schedule of key and other technical personnel to be engaged by PMC on the work should be taken along with the bid. During execution, adherence to deployment of key and other technical personnel as per the schedule of deployment should be ensured.

11.5 Execution of the work shall primarily be the responsibility of the officials designated with such responsibility. However, for large contracts senior officers shall also review the progress and quality of the work at various stages of construction. To this effect, presentations on the project performance may be made periodically before the senior officers depending upon the value of the project and progress of the project vis-à-vis schedule. Project executing authorities should put in place detailed instructions in this regard.

11.6 Project executing authorities should put in place a system for capturing the photographs and videos of important and critical activities of construction. This may be implemented in projects above a threshold value or, if possible, in all projects. Such photos/ videos may be uploaded in IT based project monitoring system to facilitate monitoring the progress and quality of work as well as assessment of delay in execution of work by stakeholders and senior management. Apart from this, photographs and videos may serve as permanent record of the project for posterity in case needed for any eventuality including litigation or enquiry/investigation.

11.7 **Sub-contracting:** As per Para 6.1.6 of the Manual, the works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting may be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hiring of equipment or engagement of labour will not mean sub-contracting. The total value of subcontracted work should not exceed the percentage of the contract price specified in the

contract (say 25%). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

11.8 Rejection of Single Bid: 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 re-tendering; 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.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

- (i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- (ii) the qualification criteria were not unduly restrictive; and
- (iii) prices are reasonable in comparison to market values.

11.9 Electronic-Measurement Books(e-MBs): Project executing authorities should, as early as possible, implement e-MBs and the same should be integrated with IT based project monitoring system, being used by the procuring entities.

11.10 Extension of time for completion of projects: Procuring entity may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

11.11 Delay in taking timely decisions: Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse

consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

11.12 Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc. to avoid delay and litigation arising out of delayed decisions.

11.13 Awarding of works in stalled contracts: It is noted that in cases, where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized, apart from inconvenience and loss of amenities to the general public due to such half completed works. Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/ single tenders in such cases, at least 20% of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/ single tender should be at the next higher level or such level as may be prescribed.

12. Delay in payment to the contractors:

12.1 Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 10 working days of the submission of the bill. This period of 10 days is for completion of all processes including prima facie scrutiny and certification by the engineer in-charge (as declared by procuring entities). The remaining payment is also to be made after final checking of the bill within 28 working days of submission of bill by the contractor. In case the payment has not been released within 10 working days as prescribed above, it shall be made as soon as possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

12.2 Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after

submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest on General Provident Fund.

12.3 In case of unwarranted discretionary delays in payments, including failure to authorise / make ad hoc payments as prescribed in para 12.1 above, responsibility shall be fixed on the concerned officers. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.

12.4 The Final bill should also be paid to the contractor within three months after completion of work.

12.5 All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors' bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.

13. Engineering, Procurement and Construction (EPC) contracts:

13.1 In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.

13.2 Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.

13.3 In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.

13.4 EPC contracts shall specify broad technical specifications and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:

- (i) Limitation of liability for procuring entity as well as contractor.
- (ii) Deviation limits and procedure for change of scope.
- (iii) Contract closing timelines and procedure to ensure timely closing of the contract.
- (iv) Performance parameters and liquidated damages for shortfall in performance.
- (v) Risk matrix and responsibilities of the contractor and the procuring entity.

In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.

13.5 To mitigate the risk involved in the methodology proposed by the contractor, the project executing authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.

13.6 To ensure quality, regular inspection and quality checks must be carried out. The Project executing authority shall carry out stage inspections in manufacturing of critical equipment/ critical activities of the project.

14. 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 personnel, 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 personnel, 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 per cent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen per cent). 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 per the schedule of deployment.

15. Additional Methods of Procurement:

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

15.1.1 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 budget in the tender document itself. FBS may be used when:

- (i) the type of consulting service required is simple and/or repetitive and can be precisely defined; and
- (ii) the budget can be reasonably 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.

15.1.2 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 consultants, through an open advertised process with specified 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.

15.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services:-

15.2.1 Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

- (i) where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore

Note: In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:

- (a) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.*
- (b) In all other cases, the procurement process is to be scrapped and restarted either as QOP or on non QCBS basis.*

The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

15.2.2 The Competent Authority for allowing QCBS shall be as follows:-

- (i) For declaring a procurement as QOP:
 - a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.
 - b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
- (ii) For Non-consulting Services not exceeding Rs.10 crore in value:
 - a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
 - b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

15.2.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
- (iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
- (iv) Not more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- (vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 15.2.2 and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

15.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 15.2.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

15.2.5 The STC shall make specific recommendations on the following matters:-

- (i) The weight to be given to non-financial parameters (not exceeding 30%).
- (ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 15.2.2(i) above who approved the declaration of the procurement as QOP.

15.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 15.2.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 15.2.3 (i) to (v). The provisions of 15.2.3 (vi) shall however not be applicable in such cases.

15.2.7 *Grounds for Declaring a Procurement to be Quality Oriented Procurement:* A procurement should be declared as a QOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.

15.2.8 Tender Documents – Fixing/ Selection of the Evaluation/ Qualification Criteria

- (i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
- (ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.
- (iii) In all cases of QOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

15.2.9 Fixing of Scoring/ Marking Criteria:

- (i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/ experts being involved in the evaluation process. When

the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

- (ii) It is better to specify minimum marks for meeting the qualifying criteria specified.
- (iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- (iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.
- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

15.2.10 *Evaluation of QCBS Bids:* For evaluation, a suitable committee shall be constituted. However, members of the ETC shall not be involved.

15.2.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is

even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.

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

16. Arbitration and dispute resolution:

16.1 During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause for 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.

16.2 Arbitration/ Court awards should be critically reviewed. In cases where there is a decision against Government/Public Sector Enterprise (PSE), the decision to appeal should not be taken 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.

16.3 The procuring entity 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 arising 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.

16.4 Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate 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. The GFRs have now been amended accordingly.


16.5 All procuring entities and public authorities are required to comply with Rule 227A of GFRs. 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 escrow account as required. Persons responsible for not adhering to the Rule 227A of the GFRs 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.

17. Aligning the interest of stakeholders

17.1 The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects/works in a qualitative manner within approved cost. A balanced framework and work culture, where risks and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (including public recognition), linked with measurable parameters of outcome/output, can help align the interests of stakeholders. An ethics-based regime, wherein integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.

17.2 Public authorities may devise strategies to provide incentives to contractors/ concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely and quality completion of projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early/ timely and quality completion of the projects. The practice of mentioning the names of contractor and the project in-charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project in-charge with the life of the project.

17.3 "Coming together is a beginning; keeping together is progress; working together is success." It is an accepted fact that the success of any project is dependent on a well-co-ordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders needs to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.


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To

- (i) Secretaries to All Central Government Ministries/ Departments
- (ii) Secretary, Department of Public Enterprises with a request for reiterating these instructions to all Central Public Sector Enterprises

Copy to:

- (i) Cabinet Secretary
- (ii) Secretary, Central Vigilance Commission.

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