

ANDREW YULE & CO. LTD.
(A Govt. of India Enterprise)

PROCEDURE/MANUAL FOR -

- **PROCUREMENT OF GOODS**
- **PROCUREMENT OF WORKS**
- **PROCUREMENT OF CONSULTANCY
AND OTHER SERVICES**

PROCEDURE/ MANUAL FOR PROCUREMENT OF GOODS
(TO BE EFFECTIVE FROM MAY 9, 2024)

PREFACE

1. The present Purchase Procedure of Andrew Yule & Co Ltd. (AYCL) uniformly followed by all the Divisions and Units was approved by the Board of Directors of AYCL in its 249th meeting held on March 30, 2022 and was made effective from April 01, 2022.
2. The Manual on Procurement of Goods has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner.
3. Any new guidelines/regulations/directives that may be issued in future by Govt. of India also shall be complied with. For such new/revision/amendments of guidelines, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance may be referred.
4. Manuals issued by AYCL are to be taken as generic guidelines, which must be necessarily broad. Units/Divisions are advised to supplement this manual to suit their local/specialized needs, by taking necessary approval in accordance with the Delegation of Power of AYCL.

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Abbreviations and Acronyms

AMC	Annual Maintenance Contract	CST	Central Sales Tax
ACASH	Association of Corporations and Apex Societies of Handlooms	CVC	Central Vigilance Commission
AITB	Additional Instructions to Bidders (may in some instances be called Bid Data Sheet – BDS or Tender Data Sheet -TDS)	CVO	Chief Vigilance Officer
AMC	Annual Maintenance Contract	DCF	Discounted Cash Flow
AYCL	Andrew Yule & Co Ltd.	DDO	Direct Demanding Officer (for RCs)
BC	Bill Currency (selling/ buying)	DFPR/ DOP	Delegation of Financial Power
BEE	Bureau of Energy Efficiency	DGS&D	Directorate General of Supplies and Disposals
BG	Bank Guarantee	DPIIT	Department for Promotion of Industry and Internal Trade
BIS	Bureau of Indian Standards	DSC	Digital Signature Certificate
BOC	Bid Opening Committee	eASP	E-Auction Service Provider
BSTC	Buyer Specific Terms & Conditions	ECS	Electronic Clearing System
BSV	Balance Sale Value	EFT	Electronic Funds Transfer
C&AG	AG Comptroller and Auditor General (of India)	EMD	Earnest Money Deposit
CA	Competent Authority	EoI/EOI	Expression of Interest (Tender)
CAPEX	Capital Expenditure (model of acquisition/ procurement)	EPM	Export Promotion and Marketing
CBI	Central Bureau of Investigation	ERV	Exchange Rate Variation
CCI	Competition Commission of India	EXIM	Export Import (Policy)
CFR	Cost and Freight	FA (&CAO)	Financial Adviser (and Chief Accounts Officer)
CHA	Custom House Agent	FAS	Free Alongside Ship
CIF	Cost Insurance and Freight	FC	Framework Contract
CIP	Carriage and Insurance Paid	FEMA	Foreign Exchange Management Act
CIPP	Code of Integrity for Public Procurement	FN	Force Majeure
CMC	Comprehensive Maintenance Contract	FOB	Free On Board
COMPAT	Competition Appellate Tribunal	FOR	Free On Rail
COTS	Commercially Off The Shelf (Items)	FOT	Free On Truck
CPCB	Central Pollution Control Board	GCC	General Conditions of Contract
CPO	Central Purchasing Organizations	GCS	General Conditions of Sale
CPPP	Central Public Procurement Portal	GeM	Government Electronic Market
CPSE	Central Public Sector Enterprise	GeMAR&PTS	GeM Availability Report and Past Transaction Summary
CRAC	Consignee Receipt and Acceptance Certificate	GFR	General and Financial Rules, 2017

GoI	Government of India
GRIR	Goods Receipt and Inspection Report
GTC	General Terms & Conditions
GTE	Global Tender Enquiry
HD	Head of the Department
IEM	Independent External Monitor
ICT	International Commercial Terms
IP	Integrity Pact
IRDA	Insurance Regulatory & Development Authority
ISI	Indian Standards Institute
IOS	International Organization for Standardization
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
ITJ	Indian Trade Journal
JLG	Joint Liability Group
KPIs	Key Performance Indices
KVIC	Khadi and Village Industries Commission
LB	Lowest Bidder
LC	Letter of Credit
LCC	Life Cycle Costing
LD	Liquidated Damages
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)
LPP	Last Purchase Price
LTE	Limited Tender Enquiry
M&P	Machinery and Plant
MeitY	Ministry of Electronics and Information Technology
MoEF	Ministry of Environment and Forests
MRP	Maximum Retail Price
MSE	Micro and Small Enterprise
MSME(D)	Micro Small and Medium Enterprises (Development Act, 2006)
MSTC	Metal Scrap Trading Corporation

NEFT	National Electronic Funds Transfer
NIC	National Informatics Centre
NIT	Notice Inviting Tender
NSIC	National Small Industries Corporation
NTH	National Test House
OEM	Original Equipment Manufacturer
OES	Original Equipment Suppliers
OE	Operating Expense (model of acquisition/ procurement)
OPMs	Original Parts Manufacturers
OTE	Open Tender Enquiry
PAC	Proprietary Article Certificate
PBG	Performance Bank Guarantee, also see SD
PC	Producer Companies
PPD	Procurement Policy Division, Department of Expenditure, Ministry of Finance
PPP	Public Private Partnership
PPP-MII	Public Procurement (Preference to Make in India), Order
PQB	Pre-qualification Bidding
PQC	Pre-qualification Criterion
PR	Requisition/ Indent
PSU	Public Sector Undertaking
PVC	Price Variation Clause
QA	Quality Assurance
RA	Reverse Auction
RBI	Reserve Bank of India
RC	Rate Contract (or Framework Contract FC)
(S)RfP	(Standard) Request for Proposals (Document)
RTGS	Real Time Gross Settlement
RTI	Right to Information
SBD	Standard Bidding Document
SC	Survey Committee

SCC	Conditions of Contract
SD	Deposit, also see PBG
SHG	Self Help Group
SLA	Service Level Agreement
SLTE	Special Limited Tender (Enquiry)
SoPP	Schedule of Procurement Powers
SPCB	State Pollution Control Board
STA	Subject to Acceptance
STC	Special Terms & Conditions
STE	Single Tender Enquiry
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
TCO	Total Cost of Ownership
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
ToR	Terms of Reference
TS	Technical Specification
UAM	Udyam Aadhaar Memorandum
UCP	The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP)
UNCITRAL	United Nations Commission on International Trade Law
URC	Udyam Registration Certificate
URDG 758	Uniform Rules for Demand Guarantees
VAT	Value Added Tax
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires:

- i. "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with Divisions/Units of AYCL;
- iii. "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the Divisions/Units of AYCL, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv. "Bidder registration document" means a document issued by AYCL, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v. "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi. "AYCL" or the "Company" means Andrew Yule & Co Ltd;
- vii. "Unit" or "Division" means the Divisions / Units of Andrew Yule & Co Ltd;
- viii. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- ix. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- x. "Competent authority" means the executive(s) who finally approves the decision as per Delegation of Power of the Company.
- xi. "Consultancy services" means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
- xii. "e-Procurement" means the use of information and communication technology (specially the internet) by the units / Division of AYCL in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;

- xiii. "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, subassemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
- xiv. "Indenter" means the units/divisions of AYCL and its officials (executives/NUS) initiating a procurement indent, that is, a request to procure goods, works or services specified therein;
- xv. "Inventory" means any material, component or product that is held for use at a later time;
- xvi. "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Units/Divisions of AYCL inviting offers for pre-qualification from prospective bidders;
- xvii. "Invitation to register" means a document including any amendment thereto published by the Units/Divisions of AYCL inviting offers for bidder registration from prospective bidders;
- xviii. "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- xix. "Non-consultancy services" includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xx. "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- xxi. "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the units/divisions of AYCL, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii. "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxiii. "Pre-qualification document" means the document including any amendment thereto issued by units/divisions of AYCL, which sets out the terms and conditions of the prequalification bidding and includes the invitation to pre-qualify;
- xxiv. "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or "Contract' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the AYCL or units/divisions of AYCL and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract" and "framework contract";
- xxv. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian

Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) AYCL's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);

- xxvi. "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxvii. "Procuring authority" means the executives/NUS who finally approves as well as those executives/NUS and tender committee members who submit the notes/reports for the approval for any decision.
- xxviii. "Procuring entity" means any unit/division of AYCL to which powers of procurement have been delegated;
- xxix. "Prospective bidder" or "vendor" means anyone likely or desirous to be a bidder;
- xxx. "Rate contract" (or the term 'framework agreement' in certain contexts) means an agreement between a AYCL or unit/division of AYCL with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
- xxxi. "Registering authority" means procurement department or the department which registers bidders for different categories of procurement.
- xxxii. "Registered Supplier" or "Registered Vendors" means any supplier who is on a list of registered suppliers of the procuring entity or a Central Purchase Organisation;
- xxxiii. "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the unit/division of AYCL to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxiv. "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by AYCL or unit/division of AYCL but does not include appointment of an individual made under AYCL Recruitment & Promotion Policy in this behalf;
- xxxv. "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof
- xxxvi. "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, buildings, irrigation systems, water supply and earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

1. Introduction – Policies and Principles

1.1. Procurement Rules and Regulations; and this Manual

Units/divisions of AYCL spend a sizeable amount on the procurement of goods, works and services to discharge the duties and responsibilities assigned to them. The Company has been delegated full powers to make their own arrangements for procurement of goods and services. These powers have to be exercised as per the DOP of the Company and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017

1.2. Fundamental Principles of Public Procurement

General Financial Rules, 2017 (Rule 144) lay down the Fundamental Principles of Public Procurement that can be organised into five (05) fundamental principles. The units/divisions must abide by and be accountable for:

- i. **Transparency Principle:** Units/divisions 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/vendors, 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, award and management of contracts. It implies that executives/NUS must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), and equal opportunities (absence of discrimination) in processes. In essence, 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, units/divisions should ensure that offers are 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:** Unit/division has 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.

In reference to the above two principles - Transparency and Professionalism Principle, the provisions in Rule 144 of General Financial Rules, 2017 i.e. Fundamental principles of public buying may be referred to:

Every authority delegated with the financial powers of procuring goods shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to procurement and for fair and equitable treatment of suppliers and promotion of competition. The procedure to be followed in making procurement must conform to the following:

- 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 trademark, trade name or brand, as far as possible.
- 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 unit/division. The specifications so worked out should meet the basic needs of the unit/division 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.
- 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 unit/division should be satisfied that the selected offer adequately meets the requirement in all respects;
- g. The unit/division 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 unit/division must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- i. A tentative schedule of the procurement cycle from date of issuing the tender to date of issuing the contract/PO should be published when the tender is issued.
- j. All units/divisions shall prepare an Annual Procurement Plan before the commencement of the year and the same should also be placed on the website.

iii. Broader Obligations Principle

Units/divisions' authorities have also the responsibility and accountability to conduct procurement in a manner to facilitates the achievement of the broader objectives of the Government that are specifically included in the 'Procurement Guidelines'

- a. Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines';
- b. Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Govt. 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. These must comply with accessibility criteria which may be mandated by the Government from time to time. Keeping this in view, Department of Expenditure (DoE) amended Rule 144 of GFR, 2017 and introduced a sub-rule (xi) imposing restrictions under the rule [as mentioned under (ii) above]. The detailed provisions were notified through Order i.e. Public Procurement No.1

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 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. 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
 - v. A natural person who is a citizen of such a country; or
 - vi. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
 - vii. "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.
- 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 (GeM): GeM 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-4. 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).
- B. The Registration Committee shall have the following members
 - i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 - ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 - iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- C. DPIIT has laid down the method of application, format etc. for such bidders as stated in para (1) (a) above. On receipt of an application seeking registration from a bidder from a country covered by para (1) (a) above the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.
- D. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.
- E. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for as specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- F. Registration shall not be granted unless the representatives of the Ministries of Home Affairs and External Affairs on the Committee concur.

- G. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by Central Government and its agencies/ public enterprises etc. but also for procurement by State Governments and their agencies/public enterprises etc. No fresh registration at the State level shall be required.
- H. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- I. For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.
- J. In transitional cases falling under para (2) above, where it is felt that it will not be practicable to exclude bidders from a country which shares a land border with India, a reference seeking permission to consider such bidders shall be made by the procuring entity to the Competent Authority, giving full information and detailed reasons. The Competent Authority shall decide whether such bidders may be considered, and if so shall follow the procedure laid down in the above paras.
- K. Periodic reports on the acceptance/ refusal of registration during the preceding period may be required to be sent to the Cabinet Secretariat. Details will be issued separately in due course by DPIIT.

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 Affairs¹⁴.
- F. A bidder is permitted to procure raw material, components, sub-assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as “sub-contracting”. However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority.

- G. Procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration as mandated under Rule 144(xi) of GFR, 2017 and Public Procurement orders issued in this regard.

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

- A. For the purpose of (2)(B) above, “qualified bidders” means only those bidders would otherwise have been qualified for award of the tender after considering all factors including price, if the Order (Public Procurement No.1) dated 23rd July 2020 had not been issued.
- B. If bidders from such countries would not have qualified for award for reasons unconnected with the said Orders (for example, because they do not meet tender criteria or their price bid is higher or because of the provisions of purchase preference under any other order or rule or any other reason) then there is no need to scrap the tender/ start the process de novo.
- C. The following examples are given to assist in implementation of the Order
- i. Example 1: Four bids are received in a tender. One of them is from a country which shares a land border with India. The bidder from such country is found to be qualified technically by meeting all prescribed criteria and is also the lowest bidder. In this case, the bidder is qualified for award of the tender, except for the provisions of the Order (Public Procurement No. 1) dated 23rd July. In this case, the tender should be scrapped and fresh tender initiated.
 - ii. Example 2: The facts are as in Example 1, but the bidder from such country, though technically qualified is not the lowest because there are other technically qualified bidders whose price is lower. Hence the bidder from such country would not be qualified for award of the tender irrespective of the Order (Public Procurement No. 1) dated 23rd July 2020. In such a case, there is no need to scrap the tender.
 - iii. Example 3: The facts are as in Example 1, but the bidder from a country which shares a land border with India, though technically qualified, is not eligible for award due to the application of price preference as per other orders/ rules. In such a case, there is no need to scrap the tender.
 - iv. Example 4: Three bids are received in a tender. One of them is a bidder from a country sharing a land border with India. The bidder from such a country does not meet the technical requirements and hence is not qualified. There is no need to scrap the tender.

iv. Extended Legal Responsibilities Principle: The procurement Department of the units/divisions has the responsibility and accountability to comply with the laws relating to Governance Issues like the Right to Information (RTI) Act and Prevention of Corruption Act, and so on. *Details of such extended legal obligations are given in Appendix 2.*

v. Public Accountability Principle: Units/division of AYCL are accountable 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. As a result, each individual procurement transaction is liable to be scrutinised independently, so, units/divisions, at each stage of procurement, must therefore place on record. Such records must be preserved,

retained in easily retrievable form and made available to such oversight agencies for scrutiny whenever needed without wastage of time. The documents and record will include:

- A. documents pertaining to need for procurement;
- B. Finalization of the technical specification and tentative cost 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; and
- H. Purchase Orders / Contracts and its amendments (if any), justification for amendments to be preserved
- I. Correspondence to be preserved till the completion of the Purchase Orders / Contracts

1.3. Standards (Canons) of Financial Propriety

Procurement done by units/divisions of AYCL is like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. Therefore, it may be useful to refer to the Rule 21 of the General Financial Rules, 2017, “standards of financial propriety”.

1.4. Public Procurement Infrastructure – Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the CPPP is to provide a single point access to the information on procurements made across various Ministries and the Departments. It is mandatory for all units/divisions to publish on the CPPP all their tender enquiries and information about the resulting contracts. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.5. Product Reservation and Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

i. Reservation of Procurement of certain class of Products from certain agencies- Khadi Goods/Handloom Textiles

All items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission (KVIC). For all the items of textile, it is mandatory to make procurement of at least 20% from amongst items of handloom origin, for exclusive purchase from KVIC and/ or Handloom Clusters such as Co-Operative Societies, Self Help Group (SHG) Federations, Joint Liability Group (JLG), Producer Companies (PC), Corporations etc.

ii. Reservation of Procurement of certain class of Products from certain agencies- Pharmaceuticals from Pharmaceutical CPSEs

- a. The list of 103 medicines to be procured from the CPSEs under the administrative control of Department of Pharmaceuticals and their subsidiaries where Government of India owns 51% or above shares
- b. The pricing of the products would be done by National Pharmaceutical Pricing Authority (NPPA). A uniform discount of 16% (would be extended to all products. All the taxes, whatsoever, would have to be passed on to procuring units/divisions of AYCL.
- c. Units/divisions would purchase from pharma CPSEs and their subsidiaries subject to their meeting Good Manufacturing Practices (GMP) norms as per Schedule 'M' of the Drugs & Cosmetic Rules.
- d. In case pharma CPSEs or their subsidiaries fail to supply the medicines, units/divisions may purchase from other manufacturers.
- e. If the pharma CPSEs or their subsidiaries fail to perform as per the purchase order, they would also be subject to payment of liquidated damages or any other penalty as per the terms of the contract.

iii. Reservation of specific items for procurement from Micro and Small Enterprises (MSE)

As per the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012, the Government has reserved 358 items for exclusive purchase from MSEs as defined under MSMED Act 2006 (Annexure IV). The latest list may be seen from the website of the MSME Ministry.

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

From time to time, the Government of India lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website. Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy. Some salient features of the policy are mentioned below:

- a. MSEs are exempted from paying the tender fee and earnest money deposit (EMD). However, exemption from paying Performance Bank Guarantee is not covered under the policy.
- b. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where units/divisions may prefer the vendor to have prior experience rather than giving orders to new entities.
- c. Units/divisions to make the payment forty-five (45) days after the supplies or as agreed in the purchase order/contract. For delays in payment the unit/division shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank.
- d. In tender, participating MSEs quoting price within price band of L1+15% shall also be allowed to supply up to 25% of total tendered value by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE. This 25% quantity is to be distributed proportionately among the bidders, in case there are more than one MSEs within such price band.

- e. Within this 25% quantity, a purchase preference of 4% is reserved for MSEs owned by SC/ST entrepreneurs and 3% is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, these will be met by other MSEs. Following MSEs would be treated as owned by SC/ ST entrepreneurs:
 - i. In case of proprietary MSE, proprietor(s) shall be SC/ST;
 - ii. In case of partnership MSE, SC/ST partners shall be holding at least 51% shares in the unit;
 - iii. In case of Private Limited Companies, at least 51% share shall be held by SC/ ST promoters.
- f. If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- g. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE.
- h. In order to develop/enhance participation of MSE vendors including MSEs owned by SCs/STs/ Women, units/divisions of AYCL, periodically, have to conduct Special Vendor Development Programmes/Buyer-Seller Meets.
- i. To monitor the progress of procurement, Ministry of MSME has launched the MSME 'Sambandh' Portal for uploading procurement details on a monthly and an annual basis which is regularly monitored by the Ministry.
- j. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

v. Relaxation of Prior Turnover and Prior Experience for STARTUPS

- a. As per Department of Expenditure, Ministry of Finance OM No. F.20/2/2014/PPD- (Pt) dated 25.07.2016 circulated vide MSME F. No. 24/2/2003/Fin-1 dated 02.08.2016, relaxation of the condition of prior turnover and prior experience in public procurement has been extended to all Startups (whether MSE or not) subject to meeting of quality and technical specifications in accordance with the relevant provisions [Rule 160(i)(a)] of GFR, 2005 {In GFR 2017 it is Rate 173(i)(b)}.
- b. It has subsequently been clarified by the Department of Expenditure, vide OM No. F.20/2/2014/PPD-(Pt) dated 20.09.2016 that there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entities may prefer the vendors to have prior experience rather than giving orders to new entities. For such procurements, wherever adequate justification exists, the procuring entities may not relax the criteria of prior experience/ turnover for Startups (medium enterprises).
- c. In view of the above instructions, wherever, it is decided not to relax prior experience/turnover criteria, adequate justification has to be given.
- d. Further, in order for a "Startup" to be considered for eligible the Startup should
 - i. be supported by a recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy & Promotion (DIPP), from an Incubator established in a post-graduate college in India; or
 - ii. be supported by an incubator which is funded (in relation to the project) from GoI as part of any specified scheme to promote innovation; or
 - iii. be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator recognized by GoI; or
 - iv. be funded by an Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with SEBI that endorses innovative nature of the business; or

- v. be funded by GoI as part of any specified scheme to promote innovation; or
- vi. have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

vi. Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:

- a. 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20%.
- b. 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.
- c. Eligibility of 'Class-I local supplier' / 'Class-II local supplier' / 'Non-local suppliers' for different types of procurement
 - i. If there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value
 - ii. Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by units/divisions, except when global tender enquiry has been issued.
 - iii. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'
 - iv. For the procurement, not covered by sub-para (c)(i) above, and with estimated value of purchases less than INR 200 Cr, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure
- d. Purchase Preference
 - i. Purchase preference shall be given to 'Class-I local supplier' for procurements undertaken in the manner specified here under.
 - ii. For the procurement which are covered under (v)(c)(ii) and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - 1) If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - 2) If L1 bid is not a 'Class-I local supplier', 50%of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 - 3) In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly.
 - 4) In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder

iii. For the procurement which are covered under (v)(c)(ii) and which are non-divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- 1) If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- 2) If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- 3) In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly.
- 4) In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
- 5) "Class-II local supplier" will not get purchase preference in any procurement undertaken.

e. Applicability in tenders where contract is to be awarded to multiple bidders

In tenders, where contract is awarded to multiple bidders, subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per the following procedure:

- i. In case there is sufficient local capacity and competition for the item to be procured, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- ii. In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- iii. If 'Class I Local suppliers' qualify for the award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents.
- iv. In case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/'Non-local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
- v. First purchase preference has to be given to the lowest quoting 'Class-I local "supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.

f. **Exemption of small purchases:** Notwithstanding anything contained in paragraph (c), procurements where the estimated value to be procured is less than INR 5 lakhs shall be exempt

from the Order. However, it shall be ensured that procurement is not split for the purpose of avoiding the provisions of this Order.

- g. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Units/divisions may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/'Class-II local supplier'.
- h. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- i. **Government e-Marketplace (GeM):** In respect of procurement through the GeM shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- j. **Verification of local content:**
 - i. The 'Class-I local supplier'/'Class-II local supplier' at the time of tender bidding shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - ii. In cases of procurement for a value in excess of INR 10 crores, the 'Class-I local supplier'/'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - iii. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity. AYCL may constitute committees with internal/external experts for independent verification of self-declarations and auditor's/accountant's certificates on random basis and in the case of complaints. AYCL may prescribe fees for such complaints.
 - iv. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the GFR for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the GFR along with such other actions as may be permissible under law.
 - v. A supplier who has been debarred by any unit/division for violation of the Order shall not be eligible for preference under the order for procurement by any other unit/division for the duration of the debarment.
 - vi. The debarment shall take effect prospectively from the date on which it comes to the notice in the manner prescribed below:

- 1) The fact and duration of debarment for violation of order by any unit/division to be promptly brought the notice of all the units/divisions of AYCL.
- 2) A list of such cases along with name of the suppliers and the period of debarment shall be displayed on the AYCL website on a periodical basis.
- 3) In respect of units/divisions other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of receipt of notification/ uploading on website in such a manner that ongoing procurements are not disrupted.

k. Specifications in Tenders and other procurement solicitations:

- i. Units/divisions shall ensure that the eligibility conditions in respect of previous experience fixed in any tender do not require proof of supply in other countries or proof of exports, *unless there is any special requirement.*
- ii. Units/divisions shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier' / 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- iii. Units/divisions shall review all existing eligibility norms and conditions regarding subparagraphs (j) (i) and (ii) above.
- iv. **Reciprocity Clause:** In case the company identifies that it is not allowed to participate and /or compete in procurement by any of the Foreign Governments due to restrictive tender condition which have direct/indirect effect of barring it such as restriction in the procuring country, execution of projects of specific value in the procuring country etc. It shall be notified to the nodal ministry and GeM through nodal ministry for appropriate reciprocal action.

- l. If the total procurement exceeds INR 1000 Crore per annum shall notify/update the procurement projections every year, for the next 5 years on AYCL's website.

- m. **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring personnel of procurement department under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

n. Manufacture under license/technology collaboration agreements with phased indigenization

- i. While notifying the minimum local content, unit/division may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement/transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- ii. Companies shall enter into a joint venture with an Indian company to participate in the tender. Units/divisions, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The units/divisions shall also make special

provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.

1.6. Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by AYCL 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.

1.7. Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below.

- a. Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- b. Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- c. Bid Evaluation:** Evaluation of bids and award of contract; and
- d. Contract Execution:** Contract management and closure.

2. Need assessment, formulation of Specifications and Procurement Planning

2.1. Need Assessment

Procurements should be initiated only based on an indent from the user department of the unit/division. The user department initiating the indent for procurement shall first determine the need/requirement for the subject matter of the procurement. The user Department shall maintain all documents relating to the determination and technical/financial/budgetary approvals of the need for procurement.

- a. **The expression/description of the need:** keeping in view the Value for Money (VfM) and to ensure wide competition. Therefore, to the extent practicable it should be:
 - i. Unambiguous, complete, using common terminology prevalent in relevant trade;
 - ii. Except in case of proprietary purchase from a selected single source or as per the requirement of the client, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words “or substantially equivalent”.

- b. **Placement of Indent/Purchase Requisitions on Purchase Dept.**
 - i. **Administrative Approval:** The delegation of powers (DOP) of the company defines the level of Competent Authority who can accord administrative approval for the proposed purchase/indent depending on the estimate value of specific purchase and the mode of tendering. Accordingly, administrative approval for procurement is to be obtained from the competent authority concerned with financial concurrence based on the relevant DOP for procurement.
 - ii. **For Raw Materials** - For standard/regular materials, indent/purchase requisitions will be made by stores to Purchase Dept. In case of non-standard items, initiation of purchases will be done by the Production Planning Dept. The production planning dept in conjunction with the purchase dept should have total control over the movement of materials on the shop floor, materials with sub-contractors and in stores and also the incoming materials in pipeline. Taking the above points into consideration, the indent/purchase requisition should be made out by the stores/ production planning dept on the purchase dept for initiating purchase action.
 - iii. In the case of Tea Division for standard materials / non-standard items, indents / purchase requisition will be raised by the Garden Managers on Purchase Dept.
 - iv. For Consumable Stores - Indents/Purchase requisition should be initiated by the stores taking into consideration the requirements of various departments as informed to stores.
 - v. For Stores and Repair & Maintenance Materials - Indent/Purchase requisition in case of stock items should be raised by stores on purchase dept. In case of non-stock items (typical), direct indent will be made by the user dept after ensuring that adequate quantities are not in stores and a copy of such indent to be forwarded to stores.
 - vi. For bought out components - Indent/Purchase requisition will be made by the production planning dept to purchase dept with a copy to stores. For items which are to be indented by sales/project sales, the latter should place Purchase Requisition to Purchase Dept for necessary action.

- vii. For other Materials - The user dept should ensure firstly that the stores do not carry the materials which they require. Indent/Purchase requisition will be made thereafter to purchase dept by user dept.
- viii. For Sundry Repairs by outside Agency – Indent / Requisition from user dept should be routed through maintenance dept. (civil / mechanical / electrical) to ensure that the requirement cannot be met in- house. Thereafter, it will be placed on purchase dept by user dept.
- ix. For indents made by Sales Department- Indent/Requisition from user dept should be routed through production & Planning Department for better control.

c. Estimation of Cost:

The estimated cost is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it should be worked out in a realistic and objective manner. Proper approval with respect to the Estimation of Cost of goods/items to be procured should be accorded from the Competent Authority as the DOP of the company. The cost of procurement of goods is to be determined by either of the following ways:

- i. Budgetary quotes from the potential vendors/bidders, ideally attempt should be made to get quotes from three (03) different potential vendors/bidders. If budgetary quotes are received from more than one (01) potential vendors/bidders, then the estimate should be framed on the average of the quotes received.
- ii. Estimated rate/rate considered in the Cost Estimation Sheet at the time of taking the Order from the client;
- iii. Last purchase price of this or similar or nearly equivalent/goods/item requirements;
- iv. IEEMA formula wherever applicable
- v. Costing analysis based on costs of various components/raw materials of the item;
- vi. Rough assessment from the price of the assembly/machine of which the item is a part or vice versa;
- vii. Through the internal or external expert costing agencies or market survey; and
- viii. Published price catalogue/Maximum Retail Price (MRP) of the item;
- ix. As a last resort, rough assessment from the opportunity cost of not using this item at all;

2.2. Formulation of Technical Specification (TS)

The TS constitute the benchmarks against which the units/divisions will verify the technical responsiveness of bids and, subsequently, evaluate the bids. Therefore, well-defined TS will facilitate the preparation of responsive bids by bidders as well as examination, evaluation and comparison of the bids by the procuring entity. It would also help in ensuring the quality of the supplied goods. The units/divisions should ensure that the specification should have the following:

- a. Provides a level playing field and ensures the widest competition; and
- b. Be unambiguous, precise, objective, functional, broad based/generic, standardised (for items procured repeatedly) and measurable. TS should be broad enough to avoid restrictions on workmanship, materials & equipment commonly used in manufacturing similar kinds of goods;
- c. Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the procuring entity without including superfluous and non-essential features, which may result in unwarranted expenditure;
- d. Normally be based on standards set by the Bureau of Indian Standards (BIS). In the absence of BIS standards, TS may be based on the relevant International standards. In absence of the BIS or

international standards or for any deviation from the BIS or international standard, the TS of the items to be prepared or approved or vetted design/ technical department/authority of the unit/division or as per the technical requirement of the client.

- e. All dimensions incorporated in the specifications shall be indicated in metric units. In case, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated.
- f. Comply with sustainability criteria and legal requirements of environment or pollution control and other mandatory and statutory regulations, or internal guidelines, if any, applicable to the goods to be purchased;
- g. Procurement of obsolete goods should be avoided and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the bidding documents.
- h. Should have emphasis on factors such as efficiency, optimum fuel/power consumption, use of environmental-friendly materials, reduced noise and emission levels, low maintenance cost, and so on.
- i. **Discourage procurement involving evaluation of samples:** According to the existing guidelines, purchase in accordance with a sample should not be usually undertaken.

2.3. Essential Technical particulars

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

- a. Scope of supply and, also, end use of the required goods;
- b. All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the unit/division may include an additional format for guaranteed technical parameters (as an attachment to the tender), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- c. Drawings;
- d. Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
- e. Requirement of an advance sample, if any, at the post contract stage before bulk production;
- f. Special requirements of preservation, packing and marking, if any;
- g. Inspection procedure for goods ordered and criteria of conformity;
- h. Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- i. Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after- sales service and Annual Maintenance Contract (AMC) requirements, if any;
- j. Warranty requirements;
- k. Qualification criteria of the bidders, if any; and
- l. Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

2.4. Technical, Administrative and Budgetary Sanctions/Approvals and signing of Indents to be obtained as per the DOP of the company.

2.5. Procurement Planning

- a. After receipt of the Indent, the concerned/procurement department should take following decisions to initiate procurement:
 - i. After receipt of the indent, the concerned/procurement department should critically review the description and TS enclosed with the indent for completeness/ approvals/funding and possibility of the widest competition and seek clarifications from the indenting officer, if needed, before initiating such procurement.
 - ii. The concerned/procurement department shall neither package nor divide its procurement or take any other action so as to limit competition among potential bidders or to avoid its obligations under 'Procurement Guidelines'.
 - iii. But in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, the concerned/procurement department authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement.
 - iv. Determine and declare in documents, any limitation on participation of bidders as per the Govt's procurement policy regarding preference to certain sections of industry, if any.
 - v. Selection of a system of bidding (single/two stage; single/two bids; suitability for e-procurement or reverse auction);
 - vi. Selection of mode of procurement (open tenders, limited tenders, single tenders, and so on);
 - vii. Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or bidding or tender documents.
 - viii. Integrated procurement plan should be prepared for goods, works and services based on the latest cost estimates, and realistic time schedule for procurement activities and contract implementation.

2.6. Publishing of Information regarding the planned procurement activities:

AYCL may publish information regarding the planned procurement activities for the forthcoming year or years on the CPPP and its website with a caveat that such publication shall not be construed as initiation of a procurement process.

3. Supplier Relationship Management

3.1. Supplier Relationship Management:

It comprises of the following functions:

- a. Ensuring compliance of suppliers to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;
- b. Holiday listing; removal from the list of registered suppliers and banning/debarment of firms; and
- c. Development of new sources and registration of suppliers.

3.2. Code of Integrity for Public Procurement (CIPP)

- a. To mitigate risk of corruption or ethical risk, the procuring officials of units/divisions and the bidders/ suppliers/vendors must abide by the Code of Integrity for Public Procurement (CIPP).
- b. Procuring official (including TC members) as well as bidders, suppliers, contractors and consultants should not be directly or indirectly indulge in the following prohibited practices, at any stage during the procurement process or during execution of resultant contracts:
 - i. **Corrupt practice:** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
 - ii. **Fraudulent practice:** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
 - iii. **Anti-competitive practice:** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders/vendors, with or without the knowledge of the unit/division, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
 - iv. **Coercive practice:** harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
 - v. **Conflict of interest:** participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of units/divisions who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain; and
 - vi. **“Obstructive practice”:** materially impede the AYCL’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the AYCL’s rights of audit or access to information;
- c. Procuring officials may be asked to sign declarations during the procurement process upto execution of resultant contracts. The bidders/ suppliers/vendors should be asked to sign a

declaration about abiding by a CIPP during vendor enlistment and in bid/tender documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of enlisted vendors, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting and so on.

3.3. Obligations for Proactive Disclosures

- a. Procuring officials as well as bidders/suppliers/vendors, are obliged under CIPP to suo-moto proactively declare any conflicts of interest in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b. Any bidder/vendors must declare, whether asked or not in a tender document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.
- c. Such voluntary declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken up by the units/division of the company.

3.4. Punitive Provisions:

If the unit/division comes to a conclusion that a (prospective) bidder/supplier, directly or indirectly, has violated this code of integrity in competing for the contract or in executing a contract, the unit/division may take appropriate measures including one or more of the following:

- a. During the procurement process
 - i. Forfeiture or encashment of bid security/EMD
 - ii. calling off of any pre-contract negotiations, and;
 - iii. rejection and exclusion of the bidder from the procurement process
- b. During execution of contract
 - i. Cancellation of the relevant contract and recovery of compensation for loss incurred AYCL;
 - ii. Forfeiture or encashment of any other security or bond relating to the procurement;
 - iii. Recovery of payments including advance payments, if any, made by AYCL along with interest thereon at the prevailing rate;
- c. Provisions in addition to above:
 - iv. Removal from the list of enlisted suppliers and banning/debarment of the bidder from participation in future procurements of AYCL for a period not less than one year;
 - v. In case of anti-competitive practices, information for further processing may be filed with the Competition Commission of India;
 - vi. Initiation of suitable disciplinary or criminal proceedings against any individual or officials of AYCL found responsible.

3.5. Integrity Pact (IP)

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

Ministry of Finance, Department of Expenditure have mandated Ministries/ Departments and their attached/subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the company and as guidance, the threshold should be such as to cover bulk (80-90% by value) of its procurement expenditure. The present threshold value is INR 3.00 Crores. A sample IP format is enclosed in Annexure 1

- a. Promise on the part of the buyer to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- b. Promise on the part of bidders not to offer any benefit to the employees of the buyer not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- c. Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc;
- d. Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
- e. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- f. Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- g. Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti-corruption principle
- h. Integrity Pact lays down the punitive actions for any violation;
- i. **Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs):** to be appointed by the organization in consultation with CVC. Names and contact details of the Independent External Monitor(s) should be listed in NIT/tender. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. The company requires to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India Departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the company. Eminent persons, retired judges of High/Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years).
- j. **In tenders meeting the criteria of threshold value/ nature of procurement:** Integrity Pact clause and format should be included in the Tender/Bid Documents. Each page of such Integrity pact proforma would be duly signed by competent signatory of the purchase department of the unit/division. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf the bidder. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non- responsive bid and shall be rejected straightway.
- k. **Role/Functions of IEMs:** The IEMs should perform their functions neutrally and independently. They would review, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of

accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/views to the designated officer of the company, at the earliest. The Monitors would also inform the company, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the CVC, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the company. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of company shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

3.6. Development of New Sources and Empanelment of Vendors/Suppliers

- a. Ensuring an up-to-date and current list of empanelled, capable and competent vendors/suppliers facilitates efficiency, economy and promotion of competition in procurement, especially where open tendering is not resorted to. The list may be referred to while floating a limited tender/local purchase/direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/duplication of records thereby saving time, especially in the case of emergency procurement. For goods and services not available on GeM, unit/division may also empanel suppliers of goods and services which are specifically required by them, periodically. Such empanelled suppliers should be boarded on GeM as and when the item or service gets listed on GeM. The list of empanelled suppliers for the subject matter of procurement be exhibited on websites of the AYCL.
- b. Unit/division should maintain a list of authorised empanelled dealers/vendors/suppliers of proprietary items where the supply is from limited sources. Such list would be prepared product-wise by the procuring department of the unit/division and put up to the Tender Committee (TC) who, after reviewing, will recommend to the concerned Divisional Head for approval. Once this list has been approved by the Divisional Head, this becomes a final list and shall remain valid for 3 years and be reviewed thereafter periodically for every 3 years. However, in the meanwhile, should the list require updating by inclusion of new suppliers or deletion as the case may be, this would be forwarded by TC for the approval of Divisional Head through Competent Authority (CA) /designated Head of Finance & Accounts (HFA) of the Division.

- c. The firms that are empanelled for supply of orders valued above INR five (05) lakh should invariably be manufacturers or their authorised agents. Unit/division shall register the manufacturers and not agents or middlemen. A sole selling agent/authorised agent could be considered for empanelment, subject to the approval of the Divisional Head duly recommended by the TC members of the unit/division, if it satisfies that he/she is the sole selling agent of manufacturers, and financial and technical capabilities of the manufacturers are ascertained by TC members of the unit/division. The availability of a suitable arrangement with the sole selling agent for after-sales service may also be ensured or legally binded by the procuring department and TC members of the unit/division.
- d. In order to build up/develop suppliers eligible for empanelment, advertisement through website should be made every 3 years, which would have to be updated for new suppliers/ fabricators/sub-contractors etc. The press advertisement should clearly state the various material requirements and the nature of the work/fabrication required by the respective units. The eligibility criteria shall also be clear with regard to technical, manufacturing and financial capabilities of bidders and the same shall be as specific as possible so that the possibility of unqualified tenderers can be minimized. The list of approved suppliers unit/division-wise with the additions made through Vendor development proposal shall be uploaded in company website and updated once in a year. For special jobs/contracts, the frequency of press tenders/insertion in website has been dealt with in this manual.
- e. The suppliers who have not applied in response to advertisement in website but have been found capable of supplying or being developed for supply/services of the requirements, may also be considered for the purpose of empanelment by the TC with due approval from Unit Head prior to the approval from CA/designated HFA and Divisional Head/ Functional Director.
- f. The form of Application for Empanelment (Annexure 2 as applicable) is to be issued to each of the prospective suppliers who shall reply to the website advertisement with all enclosures; those who have been found capable by the unit/division, such form filled up in all respect with all enclosures be sent along with the prescribed fee, if any, to the HFA & Divisional Head for scrutiny and approval. The manufacturers / vendors, where appropriate, should state in all cases whether they have been registered with the GST authorities in order to avail of the benefit of GST credit. In case of empanelment through website, the prescribed fees are to be sent along with the Empanelment Form duly filled in. The prospective vendor who shall download the Empanelment Form from website shall deposit the prescribed fees along with the Empanelment Form, duly filled in.
- g. On receipt of the application for Empanelment Form which should be duly filled up in all respects, the purchase department along with Head of Quality Assurance (QA)/his nominated representative will arrange for inspection (where practicable) and will forward the same with their remarks to the TC for technical and financial vetting. The TC, after being satisfied will put the same to Unit Head and then CA/designated HFA and the Divisional Head for approval.
- h. For tea gardens, in the absence of TC, financial concurrence will be given by the Group Accountant (Assam/Dooars) after vetting from Garden Manager regarding the technical capabilities of the vendor and they will be finally approved by the General Manager in charge of operations / Chief Executive, Tea Division.
- i. Existing suppliers should be asked to fill up the application for empanelment and complete formalities, if not done earlier.
- j. Each supplier who have been qualified for supplying materials should be given a separate Regn. No. and details of the party should be entered in a register in the following format:
 - i. Regn. No. and date of Regn.

- ii. Name, address and telephone No. (mobile & land line), e-mail address
 - iii. Status of the organization:
 - iv. MSMED Regn. No. & date (on verification of the relevant certificate) /NSIC Regn. No & Date where applicable
 - v. PAN No.
 - vi. Goods and Services Tax (GST) Regn. No.
 - vii. Excise Regn. No. (For items not covered under GST)
 - viii. VAT Regn. No. (For items not covered under GST)
 - ix. CST Regn. No. (For items not covered under GST)
- k. 'Remark' column: To record vendor rating – (Form QR10-09/other similar approved forms): where general performance of the vendor will be noted from time to time and/or deleted on the basis of their actual performance evaluation by the Purchase Department. The Purchase Department of the unit/division should update the position based on feedback from technical departments/user units (for example, Garden Managers in the case of Tea Estates or Manager (QA/ inspection/ testing) of the concerned Unit of Electrical & Engineering Divn. as to (i) quality, (ii) timely delivery, (iii) after sales services, (iv) response to emergency maintenance etc. Vendor rating should be considered the basis of awarding Purchase Orders/Contracts in future, provided that the suppliers should otherwise qualify the tender criteria.

This empanelment register should be maintained product-wise, keeping a separate section for each class of product procured. Registration No. will be allotted to each supplier. If any supplier is a supplier of more than one product the same registration no. will be used in respective product-wise groups.

This will also serve as a list of vendors (Form D10-01/ other similar approved forms) for limited tendering.

For Tea Division, names of suppliers applying for in response to the advertisement & not complying with other procedures as mentioned above & otherwise found suitable by all the Garden Managers, commercial & finance personnel from respective Group Office shall be maintained in a Register & shall constitute as the approved Vendor list for the group. All existing vendors/suppliers/Contractors shall be deemed to perform satisfactorily unless expressly stated otherwise. At the time of fresh empanelment only past performance of the parties shall be considered excluding Authorized Dealers/Stockists who are nominated by the manufacturers.

- l. Deletion of vendors - The name of any empanelled vendor may be deleted on any of the following grounds:
 - i. For failing to submit tender/quotation consecutively three times without sufficient reason
 - ii. For leaving the job incomplete
 - iii. For holding back, the company's material without proper justification and not executing the job in time
 - iv. For being debarred by the company
 - v. For being involved in any irregularity like misappropriation of Company's funds in or without collusion with any official of the Company
 - vi. Other than in situations of force majeure, after opening of financial bids, the supplier withdraws from the procurement process or after being declared as successful bidder: (i)

withdraws from the process; (ii) fails to enter into a procurement contract; or (iii) fails to provide performance security or any other document or security required in terms of the bidding documents;

The Purchase Dept., if dissatisfied, will put up a recommendation to the TC who will carry out necessary examination and will place their recommendation to Divisional Head through Unit Head prior to CA/ designated HFA, for final action.

For Tea Gardens, deletion of names of Vendors shall be made as per the clauses mentioned in 3.6 (l) & shall be considered by all the garden Managers, finance & commercial personnel at Group Office who shall recommend for deletion of names to HOD of Tea Division.

- m. Debarring of the vendors/suppliers – If a situation arises where any empanelled vendors /suppliers/sub-contractor's performance appears to be detrimental to the interest of the company such as supply of spurious material, or poor quality material, wrong execution of orders with respect to specifications, deliberately withholding deliveries, passing of design & drawings or developed/existing component/sub- component to competitors/others etc. the TC will examine such cases on reference from Purchase Dept./other key officials and recommend to Divisional Head for debarring of sub-vendors under intimation to Chief Vigilance Officer/HOD Vigilance. The procedure for informing the other PSUs as per DPE / GFR 2017 guidelines will have to be complied with and this process (of debarring vendors/suppliers) is to be mentioned in Empanelment Form.

3.7. Debarment of Suppliers

- a. Registration of suppliers and their eligibility to participate in unit/division's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-
- i. A bidder shall be debarred if he has been convicted of an offence-
 - a. under the Prevention of Corruption Act, 1988; or
 - b. the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
 - ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.
 - iii. A unit/division may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The unit/division will maintain such list which will also be displayed on their website.
 - iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

b. Guidelines on Debarment of firms from Bidding

- i. The guidelines are classified under following two types:-
 - A. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
 - B. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions

- A. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- B. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 1. Whether the management is common;
 2. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 3. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 5. All successor firms will also be considered as allied firms.

The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

- ii. Debarment by a Single Ministry/ Department – Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:
 - A. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
 - B. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer Code of Integrity).
 - C. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
 - D. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
 - E. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 - F. Secretary of Ministry/Department may nominate an officer at the rank of Joint

- G. Secretary/Additional Secretary as competent authority to debar the firms.
 - H. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 - I. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 - J. Debarment is an executive function and should not be allocated to Vigilance Department.
- iii. It is possible that the firm may be debarred concurrently by more than one Ministry/Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.
- iv. Debarment across All Ministries/ Departments
- A. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
 - B. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.
 - C. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
 - D. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
 - E. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
 - F. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

- v. Revocation of Orders
 - A. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
 - B. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

- vi. Other Provisions (common to both types of debarment)
 - A. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
 - B. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
 - C. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
 - D. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
 - E. Debarment in any manner does not impact any other contractual or other legal rights of the Company.
 - F. The period of debarment shall start from the date of issue of debarment order.
 - G. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
 - H. Ordinarily, the period of debarment should not be less than six months.
 - I. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of company. In such cases, endeavour should be to pragmatically analyse the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
 - J. All Ministries/Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

- c. **Safeguarding Company's Interests during debarment of suppliers:** Suppliers are important assets for the units/divisions and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Company. Therefore, views of the concerned unit/division may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious

misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose."

4. Modes of Procurement and Bidding Systems

4.1. Modes of Procurement

Offers from prospective bidders must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities in the DOP of the Company. The various modes of procurement are:

- a. Open Tenders
 - i. Open Tender Enquiry (OTE); and
 - ii. Global Tender Enquiry (GTE)
- b. Procurement through Selected/Empanelled Vendors/Suppliers
 - i. Limited Tender Enquiry - LTE {up to INR 25 (Rupees twenty-five) lakh}; and
 - ii. Special Limited Tender Enquiry {SLTE above Rs. 25 (Rupees twenty-five) lakh under special circumstances}
- c. Nomination Basis Tenders/Single Tender Enquiry
- d. Procurements without Calling Tenders
 - i. Purchase of Sundry items for Emergent Purpose
 - ii. Direct Procurement without Quotation;
 - iii. Direct Procurement by Purchase Committee
- e. Mandatory Procurement of Goods and Services for Goods or Services available on GeM (Rule 158 of GFR 2017)
- f. Issue of Enquiry and Receipt of Bids in Online Mode outside GeM: 'e-procurement'

4.2. Open Tender Enquiry(OTE)

- a. In OTE, an attempt is made to attract the widest possible competition by publishing the tender/NIT simultaneously on the designated websites/GeM. OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:
 - i. Procurements exceeding the threshold of INR 25 lakh (Rupees Twenty-Five Lakh);
 - ii. All common use requirements with clear technical specifications;
 - iii. For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
 - iv. When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below INR 25 (Rupees twenty-five) lakh, OTE mode may be used, if warranted.

(Rule 161 of GFR 2017)

- b. Terms and Conditions for Open Tender Enquiry(OTE)
 - i. Bidders already registered are also free to participate;
 - ii. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. The complete bidding document in should be posted on AYCL's web site, on CPPP and on GeM (if the tendering is done through GeM) to enable prospective bidders to make use of the document by downloading from the web sites. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease

- of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- iii. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.
 - iv. The tender documents should be prepared on the basis of the relevant approved technical particular or the approved client's specification.
 - v. Unit/division shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale.

4.3. Global Tender Enquiry(GTE)

- a. GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter- alia foreign firms. GTE may be viable only in following situations:
 - i. Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
 - ii. Non-existence of a local branch of the global principal of the manufacturer/vendors/ contractors;
 - iii. Requirement for compliance to specific international standards in technical specifications; and
 - iv. Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders. (Rule 161 of GFR 2017)
- b. Terms and Conditions
 - i. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in and on GeM. The complete bidding document should be posted on AYCL's web site, on CPPP and on GeM (if the tendering is done through GeM) to enable prospective bidders to make use of the document by downloading from the web sites. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.
 - ii. The availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.
 - iii. GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
 - iv. GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
 - v. In such cases e-procurement may not be mandatorily insisted upon.
 - vi. The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the

approval of the Unit Head to promote better competition and also considering account delivery requirement; and

vii. Relevant INCOTERMS should be included in the tender.

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

i. The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/organisation (e.g. autonomous bodies, CPSUs including AYCL and subordinate offices of Central Government etc.) will not be entertained.

d. **Before sending the proposals for approvals of the Global Tenders, following is to be ensured**

- i. Domestic open tender to be floated to identify domestic manufacturers/service providers for the items/ services for which approval is being sought for issuance of Global Tenders.
- ii. The proposal must contain the details of deliberations with DPIIT/relevant industrial bodies for identification of domestic manufacturers/service providers.
- iii. The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

e. **Exemptions/ Clarifications**

- i. For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to INR 200 crore for the use of Educational and Research Institutes.
- ii. On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases
- iii. On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc., which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited.

4.4. Limited Tender Enquiry(LTE)

- a. LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. LTE procedures should be default mode of procurement when the estimated value of procurement is upto INR 25 lakh (Rupees two and a half Lakh to Twenty-five Lakh). The bidding documents should be simple normally consisting of technical particulars and terms & conditions. LTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:

- i. In case of proprietary items, and/or if the supply is from very limited number of sources or where the item has been developed on the basis of the Company's own design/drawings, enquiry will be floated to all empanelled vendors irrespective of the value.
 - ii. In case customer specifies certain manufacturers or make(s)/brand(s) for any material(s)/component(s), the enquiry will be floated to those manufacturers or the manufacturers of those make(s)/ brand(s) directly or to all those authorised dealers/ distributors for those make(s)/brands as recommended by the manufacturers, where the manufacturers do not sell them directly. When such items are procured from manufacturers' recommended dealers/ distributors, competitive quotations are required to assess the varied benefits offered by various dealers.
 - iii. In case, where the indenting department specifies the brand, the same principle, as described above in respect of customer's specified brand shall also apply for floating enquiries, subject to Technical vetting by the Technical person competent to assess the particular item and nominated by Unit head.
 - iv. For Tea Division, when the brand of major inputs, e.g. agro-chemicals, fertilizers, coal etc. are mentioned in the indents raised by the respective gardens, such items with specific brand names shall be procured either from the manufacturers directly or from their recommended/ nominated distributors/ authorised dealers.
 - v. However, in case of Tea Gardens where there are no nominated Dealers/Distributors available, quotations from empanelled parties from the respective group of suppliers may be taken.
- b. Terms and Conditions
- i. Copies of the bidding documents should be sent free of cost (except in case of priced specifications/drawings) directly by speed post/courier/e-mail to firms which are registered vendors/ contractors.
 - ii. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP), AYCL website and/or on GeM.
 - iii. A simplified single Page Bid Document (Annexure 5) should be used, instead of a detailed Bid Document.
 - iv. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the Unit Head, duly recording the reasons. The requirement should then be marked for development of more sources.

4.5. Special Limited Tender Enquiry for Procurements more than INR 25 (Rupees twenty-five) Lakh

LTE mode, for values higher than INR 25lakh (Rupees Twenty-five Lakh) (Rule 162 of GFR 2017), where normally OTE should have been done, is permissible if the unit/division under the following condition:

- a. This mode may be resorted if the same falls under Clause 4.4(a) above, the reason to be cited in the indent by the intender duly approved by the Unit Head/Functional Director as per the DOP of the Company.
- b. The tendering process would be same as in the case of a normal LTE described above. However, the bidding documents are more detailed as in the case of OTE

4.6. Nomination Basis Tenders/Single Tender Enquiry

In procurement of goods, certain items (especially proprietary items) are to be procured from a single source then the Nomination Basis Tenders/Single Tender Enquiry process may be followed. For this mode, the proposal along with Proprietary Article Certificate (PAC) (format enclosed in Annexure 6) to be forwarded by the indenter/indenting department/procuring department with proper justification to the Unit Head/Functional Director as per the DOP of the Company for approval. Upon the approval of the proposal/declaration, the powers of procurement are the same as in normal conditions as per the DOP of the Company.

- a. This mode of tendering shall be adopted in the following circumstances:
 - i. To be procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/stockists).
 - ii. From a single source as mentioned/required by the client (or their authorised dealers/stockists).
 - iii. In case of emergency or the required goods are reasonably to be procured from a particular source.
 - iv. For standardization of machinery or spare parts, the required items to be procured from a selected company.

- b. The terms and conditions are as follows:
 - i. Units/division should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level for sourcing an item from OEM or PAC firms or their authorised agents;
 - ii. Proprietary items shall be purchased only from a nominated manufacturer or its authorised dealer as recorded in the PAC certificate;
 - iii. In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis. Approval for the same to be accorded from the Unit Head/Functional Director along with the approval of the PAC.
 - iv. To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organisations;
 - A. In case of single tender procurements Internal audit may be required to check at least 10 (ten) per cent of such cases;

4.7. Rate Contract (RC)

Rate Contract (RC) is essentially a price agreement with the vendors/contractors at a specified price and terms and conditions during the period covered by the RC. No quantity is mentioned nor is any minimum commitment guaranteed in the RC. It is applicable only for specialized and engineering items which are not available on GeM, and are identified as common use items and are needed on recurring basis by the unit/division of the company.

The contract price for RC shall be finalized as usual complying all the relevant provisions as mentioned in the OTE mode of tendering. However, for RC, the negotiated rate as finalized can be offered to all the other bidders besides L-1 vendor provided they are technically and commercially acceptable notwithstanding the ability of L-1 party. This is in contrast to all other cases where the ability of L-1 vendor is assessed before the ordered quantity is split among all the eligible bidders at the negotiated L-1 rate.

In RC, the order quantity is to be placed on all the vendors, who have agreed to L1 Rate & Terms, provided preference will be given to original L-1 which will be more than 50% considering his technical and commercial ability and the remaining quantity will be procured from L-2, L-3 etc. where preference will be given to L-2 considering the original value. The quantity for L2 will depend upon his Technical & Commercial ability and should not be more than 30% (in case more than two parties are eligible for RC) or should not be more than 40% (in case only two parties are eligible for RC) of the total quantity. Balance will go to L3 and other Vendors following same principle.

The agreement for RC shall normally be valid for one year. Any change in the rate after the validity period shall be treated as a fresh RC and all the necessary procedures are to be followed. If the concerned department feels it necessary to bring about any change in the RC at any time during the validity period, the case is to be put up to the TC with full facts and figures and all the supporting documents as deemed necessary and TC will give their recommendation to the original authority. However, if the rates are changed by Govt. levies/taxes, these may be changed by the purchase department after obtaining valid proof.

4.8. Direct Procurements without Calling Tenders

a. Purchase of Sundry items for Emergent Purpose:

- i. For urgency, if the Units need to procure urgently purchase of goods and services upto INR 15,000/- can be resorted through duly Nominated members by Unit-head and the rates such discovered shall be recorded and procured by approval of Divisional Head.
- ii. For value of goods and services above INR 15,000/- and upto INR 50,000/-, Unit Purchase Committee members shall recommend to the Unit (in respect to Tea Gardens)/ Divisional Head based on the market search of the product and price. All such purchases shall be recorded in the format enclosed and approval of Divisional Head (in respect to Tea Gardens)/ Functional Director to be taken before proceeding for procurement.
- iii. For value of goods and services above INR 50,000/- and upto INR 5,00,000/-, Unit Purchase Committee members shall recommend to the Unit / Divisional Head (in respect to Tea Gardens) based on the market search of the product and price. All such purchases shall be recorded in the format enclosed and approval of Functional Director / Chairman to be taken before proceeding for procurement.

The limits will apply only to the individual units or gardens and not to the division or group as a whole.

b. Direct Procurement without Quotation

- i. Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods of simple and standard specifications and when the required goods (of required specification or within required delivery period etc.) are not available on GeM. However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. The procedure is the simplest and quickest; hence it is suitable only in very low value, urgent and simple requirements in the following situations:

- A. Procurements do not exceed the threshold (for each requirement) of INR 25,000 for each case;
- B. The requirement is urgent but was not covered in the procurement plan; and
- C. The requirement is for off-the-shelf goods of simple and standard specifications.

Examples of procurement are day-to-day needs of the office and field units, and so on.

(Rule 154 of GFR 2017)

ii. Terms and Conditions

- A. The competent officer as per the DOP can initiate and complete this purchase after diligent enquiries from the market. Such powers to a limited extent can also be given to various user sections for operational needs.
- B. Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements. The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- C. In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.
- D. Selection of seller by diligent market enquiry is of essence of this mode of procurement.
- E. The presence of reputed Shopping Malls or day-to-day market may also be included in the market survey. Reputed internet shopping portals may also be explored.

c. Direct Procurement by Purchase Committee

- i. This mode of procurement is used for procurements valued above INR 25,000/-and upto INR 2,50,000 only on each occasion. It is made by a local purchase committee constituted by Unit Head/Functional Director only in case when a certain item is not available on the GeM portal (of required specification or within required delivery period etc.). However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also. This procedure is slightly more complex than direct procurement without quotation and hence is suitable for marginally higher thresholds

(Rule 155 of GFR 2017)

ii. Terms and Conditions

- A. The Functional Director/CMD may lay down an annual ceiling value per office/unit for such procurements;
- B. In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent accountal may also be considered.
- C. This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.
- D. Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini LTE) is of essence of this mode.

- E. Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed (Annexure 8); and
- F. The presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

4.9. Bidding Systems

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of Technical requirements and value of procurements. Depending on the complexity and criticality Technical of requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used:

- a. **Single Stage Bidding System:** all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where techno-commercial requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high.
 - i. **Single Stage Single Envelop System:** Where qualitative requirements and technical specifications are clear; capability of source of supply isn't critical and value of procurement is low or moderate, the single envelop system, where eligibility, techno-commercial and financial details including price bid are submitted together in the same envelop may be followed. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.
 - ii. **Single Stage Two Envelops System (Two Bid System) (Rule 163 of GFR 2017):** In technically complex requirements but where capability of source of supply is still not crucial, a two envelop system may to be followed:
 - A. The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms & conditions, EMD (If any) and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial/price bid, the price quotation along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope;
 - B. If required, technical specification and techno-commercial conditions may be modified, in a pre-bid conference/tender evaluation stage and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids;
 - C. The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the TC member with reference to parameters prescribed in the tender documents and if required, the bidders may be requested to furnish techno-commercial documents related to the procurement of the item and responsive, eligible and technically compliant bidders are decided;
 - D. Thereafter, in the second instance, the financial/price bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract.
 - E. The financial/price bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other

mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

iii. **Single Stage Multiple Envelops System with pre-qualification:** where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is high, instead of a separate stage of Pre-Qualification bidding, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop single stage bidding. In the first instance on the bid opening date only the PQB envelops (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelops of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;

iv. **Pre-qualification Bidding (PQB)**

A. In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding – please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-Qualification Criterion (PQC – for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition.

B. **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable vendor/contractor. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/contractor and thus vitiate fair competition for capable vendors/contractors. A sample PQC is given in Annexure 9. Due consideration should be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs, past successful bidders, a call may be taken – whether PQC should apply to full quantity/packages or be proportional to part quantity/package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC should therefore be carefully decided for each procurement with the approval of CA as per the DOP of the company for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.

C. **Advertisement and Notification:** The invitation for PQB shall be processed in the same manner as a normal GTE or OTE tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is

being done, including approximate likely quantities of requirements. A minimum period of 45 (forty-five) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA as per DOP of the company, the time limit may be reduced to 30 (thirty) days.

- D. **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per eligibility criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. Units/divisions shall evaluate the qualifications of bidders only in accordance with the PQC specified.
- E. **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, unit/division shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

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

- a. There are instances where the equipment/goods to be procured is of complex nature and the unit/division may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement, it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:
 - i. It is not feasible to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from prospective bidders;
 - ii. The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
 - iii. Unit/division seeks to enter into a contract for the purpose of research, experiment, study or development, or
 - iv. The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

(Rule 164 of GFR 2017)

- b. The procedure for two stage bidding shall include the following, namely:
 - i. In the first stage of the bidding process, the unit/division shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc. without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, which are prima facie considered technically and financially capable

of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc. in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;

- ii. In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the unit/division shall not modify the fundamental nature of the procurement itself;
 - iii. In the second stage of the bidding process, the unit/division shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
 - iv. Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
 - v. If the procuring entity is of the view that after EoI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EoI stage and it may be so declared in the EoI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EoI is called 'Non-committal' EoI.
- c. Invitation of EoI Tenders: In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:
- i. A copy of the advertisement;
 - ii. **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;
 - iii. **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
 - iv. **Formats for submission:** The format in which the bidders are expected to submit their EoI may be specified;
 - v. The EoI document should be made available to the interested bidder as a hard copy or on AYCL website in a downloadable form; and
 - vi. **Eligibility criteria:** The invitation to EoI should clearly lay down the appropriate eligibility criteria, keeping in mind the specific objectives of the EoI, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned.
- d. **Evaluation of EoI:** The bidders should be evaluated for shortlisting, inter-alia, based on their past experience of performance in a similar context, financial strength and technical capabilities, among others. Scoring system may or may not be used in the evaluation of the EoI. In case of non-scoring based system, evaluation of the bidders should be TC members (other committee formed by the

company for evaluation of the particular Eol) and suitable recommendation to be put up to the CA (Unit Head/Functional Director/Chairman) as per the DOP of the Company for the approval. In case of scoring based system, each bidder should be assigned scores based on the sum of marks obtained for each parameter multiplied by the weightage assigned to that parameter. All bidders who secure the minimum required marks as specified in the Eol should be shortlisted. Alternatively, instead of weighted evaluation, the Eol document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of experience, minimum number of assignments executed and minimum turnover. Under such circumstances, all bidders who meet the minimum requirement, as specified, should be shortlisted. The short list should normally comprise at least four firms. Evaluation of the bidders should be TC members or other committee formed by the company for evaluation of the particular Eol and suitable recommendation to be put up to the CA (Unit Head/Functional Director/Chairman) as per the DOP of the Company for the approval.

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

4.11. Electronic Procurement (e-Procurement)

It is mandatory for AYCL to publish and receive all bids through e-procurement portals. For this, GeM portal or other service providers in Public Sector (e.g. MSTC) and Private sector can be utilized.

4.12. Electronic Reverse Auction (RA)

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

- a. Items for Reverse Auction may be selected carefully. Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers are not good candidates for reverse auction. Items in the nature of commodities, Commercially-off-the-shelf items, items having large number of suppliers and high value procurements may be more amenable to reverse auction;
- b. It is feasible for the unit/division to formulate a detailed description of the subject matter of the procurement;
- c. There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;

- d. The criteria to be used by the unit/division in determining the successful bid are quantifiable and can be expressed in monetary terms;
- e. In cases where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.
- f. Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely
 - i. Shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
 - ii. The invitation shall, in addition to the information as specified in e-procurement, include details relating to:
 - A. Access to and registration for the auction;
 - B. Opening and closing of the auction;
 - C. Norms for conduct of the auction; and
 - D. Any other information as may be relevant to the method of procurement.

(Rule 167 of GFR 2017)

4.13. Mandatory Procurement of Goods or Services available on GeM

Government e-Market place (GeM) has been launched by Govt. of India as a single procurement portal for bringing transparency, accountability & efficiency in public procurement. All the Central and State Govt. Departments/Organizations, Central & State PSUs and autonomous bodies will make the procurement of goods and services through GeM.

Accordingly, AYCL has been registered as a buyer in the Govt. e-Marketplace Portal and approval of competent authority has been obtained to procure goods and services through GeM, meeting requisite quality, specification and delivery period of AYCL, with the GeM terms and conditions.

The following are the salient points and conditions for purchase through GeM portal. (For detailed terms and conditions, GeM Portal may be referred).

- a. Direct on-line purchases can be made on GeM up to INR 25,000/- through any of the available suppliers on GeM, meeting the requisite quality, specification & delivery period (*in case of procurement of Automobiles only, the ceiling of direct purchase will be INR 30 lakhs instead of INR 25,000/-*)
- b. Above INR 25,000/- and up to INR 5,00,000/-, the GeM portal shall be utilised for direct on-line purchases through the GeM seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM.
- c. Above INR 5,00,000/- (Rupees Five Lakhs) through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM;
- d. The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods / services under the particular product / service category, as per terms and conditions of GeM;
- e. The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.

- f. If Buyer wants to buy any specific OEM's product, then they have to go for Proprietary Article Certificate (PAC) buying after obtaining necessary approvals of competent authorities for PAC buying.
- g. Splitting of demand and creating multiple Bids/RAs is strictly prohibited on GeM.
- h. Mandatory Minimum Discount on MRP: Sellers shall offer minimum discount of 10% over MRP mandatorily unless otherwise specified for offering their products on GeM portal. The discount of 10% over MRP is the Minimum discount and sellers are free to offer higher discount on GeM.
- i. Dividing the Quantity: As per standard procedure, complete requirement incorporated in the tender enquiry document is to be covered on the lowest responsive tenderer without dividing the same. The tenderer who does not quote for the complete requirement is to be treated as NON responsive and ignored. GeM does not allow splitting of the order quantity and hence buyers are not allowed to incorporate any such condition in the bid / RA documents.
- j. Buyer is not allowed to place any order at GeM prices outside GeM. The prices on GeM are only applicable if the procurement is made through GeM portal. Using GeM prices for procurement outside GeM portal is strictly prohibited. If procurement is done outside GeM in offline mode then the laid down procedure for tendering must be followed.
- k. Tools have been deployed on GeM portal to show the price of compared products on other e-commerce sites (wherever available) and also the rates at which orders have been placed on GeM for such items in recent past. While taking decision on reasonableness of price, the buyers may also take into account the discount over MRP; Last Purchase Price on GeM, Department's own Last Purchase Price; rates on other ecommerce websites etc.
- l. As per Department of Expenditure Memo, Ministry of Finance OM No.F.6/18/2019-PPD Dated 23.01.2020 and F.6/14/2020-PPD Dated 23.10.2020, with effect from 01.07.2020, it will be mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. The Past Transaction Summary will be provided, wherever available. "GeMAR&PTS" shall be prerequisite for arriving a decision by the competent authority (Director – Finance or anyone in-charge of the post) for procurement of required goods and services by floating a bid outside GeM and its unique ID would be required to be furnished on the publishing portal along with the tender proposed to be published.
- m. However, in case it is not possible to extract GeMAR&PTS report due to urgency and non-functioning of GeM at that time or due to non-availability of internet connection, screenshots in such cases shall be placed in procurement files, along with details of reasons / circumstances. Further, in these circumstances, furnishing of unique ID on publishing portal will not be insisted.
- n. Custom Catalogue Based Bid
 - i. This functionality allows buyers to create a Custom Catalogue by providing relevant information such as Title, reference price, selling unit, specifications, drawing documents, reference images, related categories etc. for unavailable items post creation of GeM availability report.
 - ii. It allows buyers to bunch 2 or more custom catalogue. It allows Sellers to participate and create a custom offering for the custom catalogue.
 - iii. For Custom Catalogue based bid, the minimum total reference value of the bid is now revoked. The minimum bid duration is 10 days (approval from Competent Authority is required) and maximum of 45 days.

- o. BoQ Bidding: For different types of goods required in bulk (should be of similar category) can be procured through BoQ Bidding.
- p. **Constraints with respect to Custom Catalogue Based Bid/BoQ Bid:** shall not be resorted to in respect of items for which regular categories exist on GeM. GeM would be constrained to cancel any bid created by the Buyer using Custom / BoQ bid method for which regular categories exist on GeM, irrespective of the stage up to which the bid has progressed.
- q. Important Commercial terms and conditions of GeM (revised from time to time in GeM Portal):

Commercial Terms	GeM conditions
Performance Bank Guarantee (PBG)	<ul style="list-style-type: none"> • Not applicable for direct purchase option Under GeM. • PBG for 5% -10% of contract value & procurement is thru RA/e-Bidding or to be harmonized with the Client's Order. • To be submitted within 15 days from date of award of contract. • Guarantee Period: One year. Seller can provide longer Guarantee period if required. • Payments against such contract shall not be released till acceptable Performance Bank Guarantee is furnished by the seller.
EMD	<ul style="list-style-type: none"> • INR 50 Lakhs or above: 0.5% of the Estimated Tender Value • Up to INR. 50 Lakhs: 1% of the Estimated Tender Value
Payment	<ul style="list-style-type: none"> • Will be released after submission of acceptable PBG, if applicable. • Online payment within 10 days of issue of CRAC (Consignee Receipt cum Acceptance Certificate). • As per the agreed payment terms between the buyer and the bidder/vendor during the tendering stage.
Taxes	<ul style="list-style-type: none"> • Inclusive. Statutory variation if any is to sellers account and no variation in contract price on account of such variation shall be allowed during delivery period.
Integrity Pact	<ul style="list-style-type: none"> • Integrity pact, if applicable for all users (buyer & Seller) for all orders – to be accepted /agreed online.
Test certificate	<ul style="list-style-type: none"> • Self-certified Manufacturers/Sellers Warranty/Guarantee.
Material Acceptance/ Rejection	<ul style="list-style-type: none"> • CRAC (Consignee Receipt cum Acceptance Certificate) is the basis of payment. • CRAC to be issued within 10 days of material receipt. If not issued within 10 days material is considered to be deemed accepted & consignee shall forfeit their right to reject the same. • The date of receipt of material as mentioned in provisional receipt certificate is considered as receipt date. • The rejected materials should be taken back by supplier within 10 days from date of rejection without any extra cost. If not taken back within 10 days ground rent/ Warehousing charges shall be payable by the seller under return policy of GeM.
Liquidated Damages	<ul style="list-style-type: none"> • 0.5% per week or part of the week of delayed period as free estimate damages not exceeding 5% of contract value without any controversy/dispute of any sort whatsoever or to be harmonized with the Client's Order.

- r. The purchase departments will take necessary action to identify the common items available on GeM Portal that meets AYCL requirements i.e., requisite quality, specification and delivery period. On receipt of indent for such items, procurement action shall be taken up to purchase the same through GeM with terms & conditions as referred in GeM Portal.
- s. All the purchases through GeM shall be dealt as per this manual and DOP of the company.
- t. With reference to the 'Procurement from Government e-Marketplace', the orders issued from time to time by respective Ministries will also be followed / implemented.

4.14. Issue of Enquiry and Receipt of Bids in Online Mode outside GeM: 'e-procurement'

- a. As per current guidelines all tenders above **INR 2.0 lakh** are to be processed in the e-procurement mode instead of conventional tendering method. Pertaining to e-procurement, the bids are required to be submitted through Websites by the Vendors. While doing so care should be taken that the application forms and other documents are made available in the website for the purpose of participation in the tender which must also remain up to date to avoid any confusion and harassment among the prospective bidders. Moreover, following procedure is to be maintained in order to make e-procurement system effective:
 - i. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in. All tender enquiries are also to be published in the Company's web site. It should be ensured that the NIT on the website is easily searchable and visible and efforts to be made to locate likely bidders (including past bidders) and their attention should be drawn through SMS/mail/email. All registered vendors/contractors (in particular past successful vendors/ contractors) should be given intimation about forthcoming tenders via SMS/mail/email.
 - ii. Short-listing of vendors will be done on the basis of credentials and submission of EMD to AYCL. The name of the short-listed vendor will be intimated to MSTC (at present) for conducting e-tendering.
 - iii. Online bidding will be received through Internet from the short-listed vendors on a particular date and time and a CSQ is to be generated automatically by the system itself and the L-1 will be identified accordingly.
- b. In respect of Electrical & Engineering Division, the following critical production items (proprietary in nature) for which sources for procurement has been developed through intensive interaction with the vendors in the past for the purpose of standardisation of designs of the products of the Company, are exempted from Press tendering and orders will be based on rate contract/ existing price/ limited tender among all approved vendors as these items can be procured from approved vendors only. Efforts should be made to develop sufficient vendor for such item, so that the item cannot be monopolized by single vendor:
 - i. OLTC
 - ii. Tanks for AVR
 - iii. Radiators for AVR
 - iv. Condenser Bushing
 - v. Vacuum Interrupters
 - vi. Contacts for LT & HT Switchgears
 - vii. Relays
 - viii. Forged Shafts

- ix. Forged Hubs
- x. Actuators
- xi. Hydraulic Coupling
- xii. Special Electric Motors
- xiii. Metaflex Coupling
- xiv. Cast Steel Hubs
- xv. Silencer
- xvi. Non-Metallic Expansion Joint
- xvii. Current/ Potential/ Control Transformers for HT Switchgear
- xviii. Cores for LT Contactors (both Stationary & Movable)
- xix. Bakelite Thermoset Moulding Powder
- xx. Porcelain Bushing
- xxi. Flame-proof Switchgear Enclosures
- xxii. AC Synchronous Motor with Gear and BAC Motor Box
- xxiii. Journal bearing of all sizes (subject to approval of COD)
- xxiv. Collecting and Discharge Electrodes. (subject to approval of COD)

Any addition to the above list required in future shall be made only after having concurrence from the Functional Directors of the Company.

- c. In the case of tea industry, since the purchase policy is to purchase major inputs like fertilizers, insecticides, weedicides, etc. directly from manufacturers or their nominated agents and wherever possible, only BIS/ISI certified components, limited tendering will be resorted to the Licensees of certifying authority on the basis of list of approved vendors as per BIS authorities or approved dealers of the concerned manufacturers.

In the above mentioned cases, the enquiry should be floated to the listed parties following the same principle of limited tendering.

5. Preparing bid documents, publication, receipt and opening of bids

5.1. Preparation of Bid Documents

- a. The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for submitting responsive bid, should be clearly spelt out in the bidding document in simple language. A carefully prepared tender document avoids delays and complaints, hence it is worthy spending time and effort in the preparation of the bid document.

Bid documents should be based on SBDs, to ensure uniformity, the standard provisions in most sections of the are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract. Department of Expenditure has issued Model Tender Documents for Procurement of Goods.

In case of a limited tender, instead of a full set of SBD, only a machine numbered tender form is used as the tender document that should enclose the terms & conditions of the tender. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

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

- i. Inscription of the tenders and last date of submission of offer; time and date for opening of tenders
- ii. Description of the subject matter of procurement, its specifications/bill of materials/scope of work including the nature, quantity, time and place or places of delivery;
- iii. Limitation or preference for participation by bidders in terms of the Government policies;
- iv. The criteria for eligibility and qualification to be met by the bidder
- v. Make/brand, if any.
- vi. Basis of Pricing, i.e. whether fixed price contract or with Price Variation Clause;
- vii. Validity of the quoted price;
- viii. Warranty clause.
- ix. Penalty /liquidated damages clause;
- x. Right to splitting of the order, where necessary;
- xi. Earnest money deposit;
- xii. List of approved vendors, if any, for different equipment;
- xiii. Performance bank guarantee;
- xiv. Pre-dispatch inspection;
- xv. Arbitration Clause in case of disputes (Rule 173 (v) of GFR 2017);
- xvi. Risk Purchase Clause;
- xvii. Freight/Transportation of Materials including free issue of items in case of Sub-Contractors
- xviii. Integrity Pact, if applicable;
- xix. Bid Security Declaration, if applicable.
- xx. Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which the bidder's questions would be addressed; (Rule 173 (iv) of GFR 2017).
- xxi. There should be no clause that should be advantageous to one bidder over another.

- xxii. Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract successful bidder should be clearly indicated in the bidding documents. SBDs should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered”.

5.2. Tender Documents:

- a. All necessary provisions governing the contract should be clearly provided in the tender document to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations and the supplies’ timeframe/milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Model Tender Documents issued by the DoE may be used, with due customisation.
- b. Tenders containing General Conditions of Contract (GCC), additional/special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c. Units/division may issue instructions regarding Competent Authority as per DOP of Company for variations and changes in the scope of the contract.
- d. Provision of price variation clause, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- e. Appropriate technical and financial parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders, balancing considerations of quality, time and cost.
- f. Open online tendering should be the default method to ensure efficiency of procurement. The experience criteria should also be kept broad based so that bidders with experience in similar nature of items/goods can participate.
- g. Pre-bid conference may be conducted for large value tenders. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website and/ or through modes of communication.

5.3. Contents of Tender Documents or Standard Bid Document (SBD) (Rule 168 of GFR 2017)

The main sections of the SBD are:

- a. Notice Inviting Tender (NIT);
- b. Instructions to Bidders (ITB);
- c. Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- d. Eligibility and qualification criteria;
- e. Schedule of requirements
- f. Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- g. General Conditions of Contract (GCC);
- h. Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- i. Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

A reading of the sections of the tender document will make the purpose & instructions clear. However, some broad guidelines for preparing bid documents are provided in the subsequent paragraphs.

5.4. Notice Inviting Tender

The Notice Inviting Tender (NIT) is crucial for attracting wide competition in the tender. The model NIT format in SBD should be used for publishing the tender notice on CPPP Portal, GeM Portal (for tenders published through GeM) and AYCL's website, for any contract value is more than 25 lakhs. It should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if they decide to participate, how to go about it. To ensure competition, attention of all likely bidders, for example, registered vendors, past suppliers and other known potential suppliers, should be invited to the NIT through email/SMSs/letters. In e-procurement, the respective website may be programmed to generate these alerts automatically.

For LTE, NIT may be uploaded on the above-mentioned websites with a note saying: "This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is limited to the selected AYCL's registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with AYCL as per procedure."

Printouts of the tenders published on the website should be collected and kept on record. The complete details of the dates, on which advertisements actually appeared on the website, should be indicated while sending cases to competent authority for approval.

5.5. Information to Bidders (ITB) and AITB

ITB contain all relevant information as well as guidance to the prospective tenderers regarding all aspects of obtaining tender documents, and preparing & submitting a responsive bid. It also mentions the process of establishing the eligibility of the tenderer as well as evaluation and comparison of tenders and award of contract. Information to be provided under ITB may remain unchanged in every tender, any changes warranted by special circumstances may be indicated in a separate Appendix to ITB (AITB). Important clauses of ITB/ AITB which may require attention and action are:

- a. **Bid Security/EMD:** if required, to be submitted with the bid should be clearly mentioned.
- b. **Purchase Preference Policies:** should be in line with current Government policies and must be declared in the ITB/AITB and in NIT (if required)
- c. **Point of delivery of the goods:** should be clearly mentioned.
- d. **Basis of price:** whether it is fixed contract or Price Variation Clause to be implemented in the bid.
- e. **Terms of payment:** should be clearly mentioned. Details in this regard has been given in the subsequent chapters.
- f. **Taxes & duties:** as applicable in the tender
- g. **Bid Validity:** should be mentioned in the ITB/AITB, normally 60 days for LTE/OTE and 90 days for GTE. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the

expiry of the bid validity. The bid security/EMD provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

Apart from the above, any other requirements as per the requirement of the unit/division to be included in the ITB.

5.6. Other Points that may be included in the ITB/AITB

- a. **Clarification of Tender Documents:** A prospective bidder requiring clarification on the tender documents may notify to unit/division in writing, well before the due date of submission of bids, and a response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.
- b. **Amendment of Tender Documents (Rule 173 (iii) of GFR 2017):** At any time prior to the date of submission of bids, the unit/division may, whether at their own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents uploaded on the website. Such amendment should be published before seven days prior to last date of bid submission, if less than seven days to last date of bid submission then last date of bid submission should be suitably extended. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.
- c. **Sealing and Marking of Tenders:** The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on. If the outer envelope is not sealed and marked properly, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All these instructions are to be suitably incorporated in the tender documents.
- d. **Withdrawal, Substitution and Modification of Tenders:** The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid to be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

5.7. Scope of Work / Items required:

Scope of Work or items required with the required quantity should be clearly spelled for easy understanding for the prospective bidders. In case, the required quantity mentioned should be clearly mentioned as 'fixed' or 'variable' in nature during the execution of the contract. In case, the quantity mentioned is variable in nature then percentage of increase or decrease should be within 25% of the stated quantity. The text of the bid document should be self-contained and comprehensive without any

ambiguity. All essential information, which a bidder needs for submitting responsive bid, should be clearly spelt out in the bidding document in simple language.

5.8. Eligibility/Evaluation/Qualification Criteria and Schedule of Requirements

- a. **Eligibility and qualification criteria:** It is intended to evaluate a tender and determine whether a tenderer has the required qualifications, it may be clearly specified in the tender document. The eligibility and qualification criteria mentioned should be specific, board based and should be in line with requirement of the bid.

The bidder has to ensure that they provide convincing proof of having fulfilled these criteria. *Any criteria not specified in the tender cannot be used for evaluation or qualification.*

The condition of prior turnover and prior experience may be relaxed for Startups (may be MSMEs or otherwise) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (Rule 173 (i) of GFR 2017). For avail this, bidder has to submit any the relevant document as mention in clause no: 1.9(v)(d) of the manual.

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

- b. **Brand/make (if any):** As per requirement of the customer, brand/make may be specified in the bid document. Apart from this, if any specific make is required then proper documentation to be accorded from technical/design team along with the approval of Unit Head and such makes when specified in the bid document should always be followed by the words “or substantially equivalent”.
- c. **OEM/Authorised Dealer/Agents of Supplier:** When a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product. If any firm participating could not produce the manufacturer's authorisation certificate, then their bid is liable for rejection.
- d. **Schedule of Requirements:** This section comprises the list of goods and delivery schedule. Quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/ qualifications/financial bids would be on a schedule by schedule basis or on the basis of a total of all schedules put together.

5.9. Special Conditions in GTE Procurements

- a. **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to

the INR - except for expenditure incurred in India (including agency commission if any) which should be stated in INR. Indian Bidders are to quote in INR only.

- b. **Agency Commission:** The amount of Agency Commission, (normally not exceeding 5%) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the bid) between the bidder and the Indian Agent. The Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. AYCL or their authorized agencies shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/suspended from having business dealings with AYCL, following laid down procedures for such banning/suspension of business dealings.
- c. **Delivery Terms:** to be expressed in terms of Incoterms. As per the policy of the Government all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/ FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/Department may be obtained. However, imports involving ocean freight of general liner: cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/ FAS (Free Alongside Ship) or CFR (Cost & Freight)/ CIF(Cost, Insurance & Freight) basis. The company may make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. Before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed.
- d. **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of INR 5 crore. For large number of imports contracts, the company may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of "Open Cover (all Risk)". Where delivery of imported goods is required on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the responsibility of the company.

5.10. General Conditions of the Contract (GCC) & Special Conditions of the Contract (SCC)

The GCC to be used for contracting for procurement are provided in the SBD. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute

resolution. Clause that It should be mentioned in GCC are guarantee/warranty; penalty/liquidated damage; risk purchase; performance bank guarantee; pre-dispatch instruction; force majeure; Integrity Pact; Arbitration clause in case disputes and so on. Instead of modifying the GCC every time, any changes warranted by special circumstances may be indicated in a separate SCC with the prior approval of the Unit Head/Functional Director as per the DOP of the company and GCC may be included unchanged in every tender document. It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

5.11. Submission Formats

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

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

It is mandatory to publish the tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP). These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/ Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party. These instructions would not apply to purchase of goods without quotations or direct purchase. Bids through GeM portal need not be published in CPPP.

5.13. Receipt and Custody of Tenders

- a. **Pre-bid Conference (Rule 173 (x) of GFR 2017):** In case of turnkey contract (s) or facilities of a special nature for procurement of sophisticated and costly equipment or large works or complex consultancy assignments, a suitable provision is to be kept in the bidding documents for one or more pre-bid conference for clarifying issues/clearing doubts, if any, about the specifications and other allied technical/commercial details of the plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference should be indicated in the tender enquiry document. Bidders should be asked to submit written queries in advance of the conference. After the conference, if any revision of the techno-commercial required, the same should be recommended by the TC member for the approval of CA i.e. Unit Head/Functional Director and upon the approval of CA, a formal corrigendum may be issued and uploaded with the bid document in the website and shared with all the bidders who purchase or have purchased the bid documents.
- b. **Extension of Tender Opening Date:** Sometimes, situations may arise necessitating modification of the tender documents already issued or put on sale. Also, after receiving the documents, a potential tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/modification should be simultaneously sent to all the selected suppliers by registered/speed post/courier/e-mail in case of LTE. In case of OTE, the copies of such amendment/modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail, to all the parties who have already purchased the tender documents including the tender documents for downloading put on the CPPP, GeM and AYCL own website.

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

- c. **Submission, Receipt and Custody of Tenders:** In e-procurement, all tenders uploaded by unit/division are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:
- i. Unit/division shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes to be opened and closed inform of at least two (02) TC members. The tender box shall have two locks. Key of one lock will be with Unit Head & the other key with the official nominated by him;
 - ii. Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
 - iii. For bulky/oversized bids which cannot be dropped into tender boxes, the procurement officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers may be mentioned in the bid documents.

5.14. Procedures to be followed during Bid Opening

Immediately after the deadline for bid submission, unit/division shall proceed to the bid opening at the appointed date & time as declared in the tender/bid document. In e-procurement, bids are opened online. In offline tenders, bidder shall be invited to attend the tender opening in each tender irrespective of value. Tender to be opened by any two members of the tender committee (TC), one of whom must be from finance, would open the sealed tender envelope(s) in presence of the tenderer(s) or their representative(s). In case of tea gardens, sealed tender shall be opened jointly by the respective Manager and Asst. Manager and the Group Accountant wherever available in presence of intending bidders:

- a. The authorised representatives of bidders, who intend to attend the tender opening are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 10;
- b. At a prescheduled date and time, two members TC should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into

the appropriate box or sent to the Tender Committee (TC), if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids. TC members present should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids (i.e. bids received after the specified date and time for receipt of bids) should be separately counted but kept aside and should not be considered. (Rule 165 of GFR 2017);

- c. After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the TC members present. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the TC members. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the TC members;
- d. Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the TC members opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the TC members should write them in words. All rebates/discounts should be similarly circled, numbered and signed. In the absence of any alteration/overwriting/whitener/blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
- e. TC members to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that TC members has no authority to reject any tender at the tender opening stage;
- f. All envelopes after opening shall be put in a bigger envelope/ box and the same shall be properly sealed and duly signed by the TC members in presence of the tenderer(s)/their representative(s) present. Proper sealing and codification need to be done on samples as well for samples which accompany the bid. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
- g. A bid opening report containing the names of the tenderers (SI No wise), salient features of the tenders, as read out during the opening of tenders, will be prepared by the TC members, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement may be obtained for him.

- h. In the event of postponement of tender opening on the scheduled date due to any reason e.g. change in the tender terms and conditions; change in the specifications etc., equal opportunities shall be given to all the bidders by notifying the change sufficiently in advance of the revised opening date. Such postponement of Tender Opening Date shall be made in the same mode and means followed as in case of initial tender notification.

6. Forms of Securities, Payment Terms and Price Variations

6.1. Forms of Security

a. Bid Security/Earnest Money Deposit (EMD) (Rule 170 of GFR 2017)

To safe guard against a bidder's withdrawing or altering their bid during the bid validity period in the case of advertised (OTE and GTE tenders) or LTE, Bid Security or EMD is to be obtained from the bidders.

- i. Bid Security or EMD can be waived in the following cases and the same to be ensured by Tender Committee (TC):
 - A. For Contract value upto INR 5.00 Lakhs.
 - B. Procurement by Brand name or through authorised dealers/distributor of manufacturer of the particular brand; however, in such cases, EMD will be applicable mandatorily for tenders of value over and above INR 5.00 lakhs;
 - C. Procurement from the vendor whose turnover is more than INR 50 crores
 - D. Procurement from Micro, Small and Medium Enterprises (MSMEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry of Department.
 - E. Procurement from Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT)
 - F. Procurement from vendor who has substantial dues (more than 5% of the estimated tender value) from the unit inviting tender.
 - G. For Tea Garden, EMD exemption is applicable for purchase of tea seeds and tea plants (saplings).

For Clause (C), (D) & (E) above, proper documentary evidences (certified copy) to be furnished preferably in the techno-commercial proposal of the bid. If any bidder has any dues from the unit/division inviting tender, EMD may be adjusted against such dues on the basis of specific request of the vendor in writing preferably in the techno-commercial proposal of the bid. If reason for non-submission of EMD or documentary evidence of MSE/Startups or request letter for adjustment against the outstanding balance for EMD is not mentioned in the techno-commercial proposal of the bid, the tender will be rejected.

- ii. **Bid Security or EMD:** In case of OTE, GTE or LTE, bid security or EMD is mandatory. The amount of bid security to be fixed as follows, rounded off to the nearest thousands of Rupees, as determined by the unit/division:

Total Estimated Tender value or Last Purchase Order	EMD amount
INR 50 lakhs & above	0.5% of the Estimated Tender Value
Upto INR 50 lakhs	1.0% of the estimated Tender value

b. Performance Security (Rule 171 of GFR 2017)

- i. To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of 5% to 10% of the value of the contract as specified in the bid documents. Performance security may be furnished in the form of Insurance Surety Bond, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the AYCL's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities. The concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto INR One (01) lakh.
 - ii. Performance Security is to be furnished with 14(fourteen) days from of the award of contract/PO and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
 - iii. The performance security will be forfeited and credited to the company's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after they duly performs and completes the contract in all respects but not later than 60 (sixty) days of completion of all such obligations including the warranty under the contract.
 - iv. Unlike contracts of works or capital items, Performance Security may be waived in case of procurement of Goods depending on the market condition and commercial practice for the particular kind of Goods (Rule 171 of GFR 2017). For waving the performance security, approval to be accorded from the Competent Authority (Unit Head/Functional Director) as per the DOP of the Company, before publishing the tender.
- c. **Warranty Bank Guarantee:** In case of procurement of goods for value more than INR five (05) lakhs, there is usually a defect liability/warranty clause against defects arising from design, material, workmanship or any omission on part of the vendor/contractor during a specified period of months from the date of commissioning or from the date of dispatch in case of goods – whichever is earlier (the specified period should be in line with the client requirement or usual market practice). In such cases, the performance guarantee is to be valid upto 60 (sixty) days beyond the warranty period. It is normally permissible in such a situation to allow Performance Security to be valid upto 60 (sixty) days beyond delivery/commissioning period. In case of non-submission of Performance Security, the contractor has to submit a fresh Warranty Bank Guarantee of 5% to 10% of the value of the goods in the currency of the contract valid upto 60 (sixty) days beyond the Warranty period. If any vendor could not produce the Warranty Bank Guarantee, then suitable amount to be retained from their dues that to be released after the completion of warranty period or after the receipt of the Warranty Bank Guarantee. Unlike contracts of works or capital items, warranty bank guarantee may be waived in case of procurement of Goods depending on the market condition and commercial practice for the particular kind of Goods. For waving the warranty bank guarantee, approval to be accorded from the Competent Authority (Unit Head/Functional Director) as per the DOP of the Company, before publishing the tender.

d. Verification of Bank Guarantee (BG): Bank guarantees submitted by the tenderers/suppliers as EMD/performance securities/Advance payments need to be immediately verified from the issuing bank before acceptance. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/performance security/advance payments and for various other purposes are as follows:

- i. BG shall be as per the prescribed formats
- ii. The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- iii. The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);
- iv. The confirmation from the issuing branch of the bank is obtained in writing through registered post/speed post/courier. The bank should be advised to confirm the issuance of the BGs specifically quoting the letter of AYCL on the printed official letterhead of the bank indicating address and other details (including telephone nos.) of the bank and the name, designation and code number of the officer(s) confirming the issuance of the BG;
- v. Pending receipt of confirmation as above, confirmation can also be obtained with the help of responsible officer at the field office, which is close to the issuing branch of the bank, who should personally obtain the confirmation from issuing branch of the bank and forward the confirmation report to the concerned unit/division.

Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the unit/division should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

e. Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments: A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by units/divisions. They shall also make arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

6.2. Payment Clause

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

6.3. Advance Payment

Ordinarily, payment to be released only after the services have been rendered or supplies made. However, in case of advance payment to the suppliers against booking of orders shall be made against acceptable Bank Guarantee (BG) for an equivalent amount with sufficient validity strictly in terms of the condition of the approval of the purchase proposal by competent authority. Before releasing the advance to the suppliers, necessary confirmation shall be obtained from the concerned Branch of the Bank issuing such BG. Such advance payments should not exceed the following limits:

- a. Maximum 30% of the contract value to private firms;
- b. Maximum 40% of the contract value to a state or central Government agency or PSU;
- c. In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- d. In exceptional cases, the company may relax the above-mentioned ceilings

In each cases above, proposal should be routed through the Head of Finance & Account for approval from the Competent Authority.

6.4. Firm Price Vis-à-vis Variable Price

The PVC may be stipulated for items with inputs (raw material, labour, etc.), prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the company having to pay a higher price if prices fall. For high value (more than INR 3 Crore) tenders with deliveries longer than 18 months, PVC may be provided to protect the company's interests also.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. To include the PVC in the tender, recommendation should be route through the TC member for the approval of the Unit Head/Functional Director as per DOP before the publishing of the tender. It is best to proactively provide the Company's PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

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

- a. The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;
- b. Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- c. Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the purchase order/contract. The LD will be applicable on the price as varied by the operation of the PVC;

- d. No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser/company as per the denial clause in the letter of extension of the delivery period;
- e. Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by the company;
- f. Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- g. The clause should also contain the mode and terms of payment of the price variation admissible; and
- h. The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to them.
- i. Notwithstanding the above formalities, it should be appreciated that it is in the interest of the company to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.5. Exchange Rate Variation

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

To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be the due date of opening of tenders/seven days prior to the due date of opening of tenders. The variation may be allowed between the above base date and date of remittance to the foreign principal/mid-point of manufacture of the foreign component. The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question.

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

Documents for Claiming ERV:

- a. A bill of ERV claim enclosing the working sheet;
- b. Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;
- c. Copies of the import order placed on the supplier; and
- d. Supplier's invoice for the relevant import order.

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

6.6. Incoterms Terms of Delivery

INCOTERMS Options	Applicable to
Ex-Group of Terms	Buyer takes full responsibility from point of departure
EXW – Ex-Works	Any mode of transport
Free Group of Terms	freight is not paid by the seller
FCA – Free Carrier	Any mode of transport
FAS – Free Alongside Ship	Sea and inland waterway
FOB – Free On Board	transport only
C Group of Terms	Freight is paid by the seller
CPT – Carriage Paid To	Any mode of transport
CIP – Carriage and Insurance Paid to	Any mode of transport
CFR – Cost and Freight	Sea and inland waterway transport only
CIF – Cost, Insurance and Freight	
Delivered Group of Terms	Seller takes responsibility from an intermediate point onwards
DAT – Delivered At Terminal	Any mode of transport
DAP – Delivered At Place	Any mode of transport
DDP – Delivered Duty Paid	Any mode of transport

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the 'title of goods' at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

- a. Control and care of the goods while in transit;
- b. Carrier selection, transfers and related issues;

- c. Costs of freight, insurance, taxes, duties and forwarding fees; and
- d. Documentation, problem resolution and other related issues.

Details of responsibilities in term of incoterms is mentioned in Annexure 14.

Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

6.7. e-Payment

e-payment is done by adopting Electronic Clearing System (ECS) and Electronic Fund Transfer (NEFT/ RTGS) procedure. As per RBI guidelines, ECS mandate in RBI's format may be obtained at the time of empanelment of suppliers and in the bid document. Format is available with all Banks.

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

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

6.9. Refund from Supplier

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

6.10. Payment against Time Barred Claims

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

7. Evaluation of Bids and Award of Contract

7.1. Tender Evaluation

The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/relaxed while evaluating the tenders. The aim should be ensuring that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of the Company. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process.

7.2. Tender Committee (TC)

In every Unit of AYCL, a TC would be formed consisting of the following personnel:

- a. Two executives from Purchase Dept or the concerned Indenting Dept as the case may be;
- b. Two executives from Technical Dept to include the Company's own Civil/ Mechanical/Electrical Engineers;
- c. Two Finance Executives;

Where Technical executives are not available due to infrastructure of any particular Unit, the TC will be formed by the executives of the Purchase Dept, Finance Dept & Marketing Department, following the above mentioned procedure.

The composition of the Tender Committee will vary depending on the value, nature of the tender but a member of the Tender Committee shall not be below the level of Grade E1/ (A) Officer. E-0 grade executives i.e. CA/TA cannot be member of Tender Committee but they can assist the Tender Committee in their paper work.

An undertaking from each member of the Tender Committee is to be obtained declaring that he/she has not any personal interest in the companies/agencies participating in the tender process; it is also to be noted that any member having interest in any participating company/ agency should refrain from participating in the Tender Committee.

The constitution of the TC should be approved by the Chairman & Managing Director upon the recommendation of Director (Finance) and concerned Divisional/Unit Head. Such approval should be positively taken every year. Whenever a new Tender Committee is constituted, formal appointment letters are to be issued to all Members. For the purpose of carrying out its functions, at least one executive from each of the above categories will comprise the TC depending on the availability of the respective executives. Of these, quorum will be at least two, one of whom must be from finance. In case of any

deviation in formation of tender committee, Chairman & Managing will be the approving authority on recommendation of Director (Finance).

In case of tea gardens, the present system of issuing tender documents by the Garden Managers being based on DOP with financial concurrence of respective Group Accountant may be continued and the functions of TC as given will be carried out by the Manager in consultation with Group Accountant.

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

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

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

7.3. Schedule of Procurement Powers (SoPP):

Procurement power should be as per Delegation of power (DOP) of below board level executives of AYCL and DOP of functional / whole-time directors of AYCL approved by board on 12/04/23 and effective from 01/05/2023.

7.4. Preparation and Vetting of Comparative Statement

The unit/division should prepare a comparative statement of quotations (CSQ) received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The CSQ so prepared and signed by the concerned/procuring officers and TC members. It should also be vetted by the finance department of the unit/division for veracity of information and before placing it to the approving authority as per DOP of Company for approval. The above procedure is not applicable in case of procurement through GeM.

7.5. Preliminary Examination

- a. Unresponsive Tenders:** Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC members to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:
- i. The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
 - ii. The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
 - iii. The bidder is not eligible to participate in the bid as per laid down eligibility criteria
 - iv. The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;
 - v. The bid departs from the essential requirements specified in the bidding document
- vi.** Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule
- b. Non-conformities between Figures and Words:** Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e- Procurement. This should be taken care of in the manner indicated below:
- i. If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
 - ii. If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
 - iii. If there is a discrepancy between words and figures, the amount in words shall prevail.
 - iv. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to the observation, the tender is liable to be rejected.
- c. Discrepancies between Original and Additional/ Scanned Copies of a Tender:** Discrepancies can also be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Here also, this issue is to be taken up with the tenderer in the same manner as above and subsequent actions taken accordingly. In e-Procurement there could be discrepancies between the uploaded scanned copies and the originals submitted by the bidder. However normally no submission of original documents in physical format except Cost of Bid Documents (if any), Bid Security and statutory certificates should be asked for in e-Procurement.
- d. Minor Infirmary/Irregularity/Non-conformity:** During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document. Such minor issues may be waived provided they do not constitute any material deviation and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary,

observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by e-mail/registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform the view or respond by that specified date, their tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

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

7.6. Evaluation of Responsive Bids and Decision on Award of Contract

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

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

- i. **Evaluation of eligibility/ qualification Criteria:** Tenders that do not meet the required eligibility/qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of unit/division's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in their tender as well as such other allied information as deemed appropriate by unit/division.
 - ii. **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC members in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/deviation form submitted by the tenderer. It is important to judge whether an exception/deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and the Company.
 - iii. **Evaluation of Commercial Conditions:** TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the tender document have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and the Company.
 - iv. **Considering Minor Deviations:** that Unit/division is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:
 - A. Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
 - B. Limits, in any substantial way, inconsistent with the tendering documents, the Company's rights or the tenderer's obligations under the contract; or
 - C. If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.
 - v. **Declaration of Successful Bidders:** If it is a multiple envelop tender, then the procuring officer and TC members prepares a recommendation of techno-commercial bid to declare successful bidders. In such cases, after the approval of Competent Authority as per DOP of the Company, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelop/cover tender, TC member proceeds to evaluate the price aspects without a reference to Competent Authority at this stage.
- b. Right of Bidder to question rejection at Techno-commercial Stage:** A tenderer shall have the right to be heard in case they feel that a proper procurement process is not being followed and/or their Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send their

representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the Company in accordance with the provision of internal guidelines shall not be subject to review as mentioned in below para.

c. Evaluation of Financial Bids and Ranking of Tenders in general:

- i. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;
- ii. Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;
- iii. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the procuring entity also gives special importance to factors such as high quality performance, environmental-friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;
- iv. Normally, the comparison of the responsive tenders shall be on total outgo from the Company's pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore, it should normally be on the basis of CIF/FOR destination basis, duly delivered, commissioned, as the case may be:
- v. In the case of goods manufactured in India or goods of foreign origin already located in India, VAT/sales tax and excise duty and other similar taxes and duties, which will be contractually payable (to the tenderer) on the goods are to be added;
- vi. In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added;
- vii. As per policies of the Government from time to time, the Company reserves his option to give price/ purchase preferences as indicated in the tender document;
- viii. In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable,

- will be taken into account to for deciding the lowest evaluated cost for Company in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive; and
- ix. If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

GTE Tenders

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

- i. **Currency of Tender:** The price could be quoted under the RBI's notified basket of currencies, in addition to the INR, except for expenditure incurred in India (including agency commission if any) which should be stated in INR. All offers are to be converted to INR based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.
- ii. **Currency of Payment:** To be paid in the currency/currencies in which the price is stated in the contract.
- iii. **Evaluation of Offers:** As per Government policy, the Company should ensure imports on FOB/FAS basis failing which a No Objection Certificate (NOC) should be obtained from the Ministry of Surface Transport (Chartering Wing).

The foreign bidders are normally asked, in the bid documents, to quote both on FAS/FOB basis and also on Cost and Freight (CFR)/CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with purchasers reserving the right to order on either basis. They should also to indicate the custom tariff number and custom duty applicable in India. In the case of FAS/FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to make up the CIF cost. To arrive at the Free On Rail (FOR) cost, 1% shall be added over and above CIF as port handling charges, custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight and Octroi/ entry tax, as assessed, may be added to make it a FOR/Free On Truck (FOT) destination. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from Company's bankers) should also be loaded.

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

7.7. Deliberations by the Tender Committee for Award of Contract

- a. **Timely Processing of Tenders (Rule 174 (i) of GFR 2017):** To enable timely decision making, complete time schedule of finalising the tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting. As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule in the below table is a guideline for finalising contracts against various modes of procurements.

SL.	Table: Indicative time schedule		
	Mode of Procurement	Indigenous	Imported
1	Open tender/ (e-tendering)	60 days	75 days
2	Procurement through registered vendors/(Special) limited tenders	45 days	60 days
3	Proprietary basis/nomination basis	30 days	45 days

This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, site visit/pre-bid meeting with prospective bidders and other guidelines, and so on.

- b. **Extension of Tender Validity Period:** Due to some exceptional and unforeseen reasons, the unit/division is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD (if any) for the corresponding additional period. A tenderer may not agree to such a request and this will not be tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.
- c. **Time limit of submission of bid:** For submission of bid, the following time limits should be allowed to the bidders except in case of exigency:
- i. Global tenders Minimum 21 days;
 - ii. Other Advertised tenders (outside GeM Tenders) Minimum 14 days;
 - iii. Tenders in GeM Minimum 10 days;

In case of recorded exigencies, a reasonable time should be permitted for submission of tenders and in those cases, enquiry shall be sent by faster means like FAX/ E-mail/Speed Post.

No tender shall be accepted after the date and time of tender opening.

In case of global tender, notices shall be sent to Indian Trade Journal, Indian Embassies in foreign countries of political bidders &/or Embassies of foreign countries of potential bidders in India.

- d. **Variation of Quantities at the Time of Award:** At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data. The tendered quantity can be increased or decreased by 25% for ordering, if so warranted. This may be mentioned in the tender documents. Any larger variation may throw up issues about transparency.
- e. **Option clause:** In case of long running/large procurements, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause [normally 25 %] is incorporated in the tender document, reserving purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the tenderers.

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

However, in case of critical/vital/safety/security nature of the item, large quantity under procurement, urgent delivery requirements and inadequate vendor capacity it may be advantageous to decide in advance to have more than one source of supply. In such cases a parallel contract clause should be added to the bid documents, clearly stating that unit/division reserves the right to split the contract quantity between suppliers. The manner of deciding the relative share of lowest bidder (L1) contractor and the rest of the contractors/tenderers should be clearly defined, along with the minimum number of suppliers sought for the contract. In case of splitting in two and three, the ratio of 60:40, 50:30:20, respectively, may be used – a different ratio may also be justified.

The following guidelines are to be considered while opting for parallel contracts:

- i. L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
 - ii. For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counter offer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non-acceptance of the counter offer by the L2 party, a similar offer shall be made to L3 and L4, and so on.
- g. **Reasonableness of Prices:** In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. [For more details on judging reasonableness of prices, please see para 2.1.(e) above]. Where there is no estimated cost, a comparison with Last Purchase Price (LPP - the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:
- i. The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
 - ii. Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
 - iii. Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
 - iv. Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;
 - v. In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;

- vi. It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view;
- vii. Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

h. Consideration of Abnormally Low Bids: An Abnormally Low Bid (ALB) is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Unit/division may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, unit/division determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the unit/division may reject the Bid/Proposal-

In the case of predatory pricing as well, unit/division may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders.

No provisions should be kept in the Bid Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs. Wherever, there are compelling circumstances to ask for Additional Security Deposit/Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority competent to finalise the particular tender.

i. **Cartel Formation/Pool Rates:** It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

j. Negotiations (Rule 173 (xiv) of GFR 2017)

- i. Normally, there should be no negotiation but may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. The circumstances where negotiations may be considered could be:
 - A. Where the procurement is done on nomination basis;
 - B. Procurement is from single or limited sources;
 - C. Procurements where there is suspicion of cartel formation which should be recorded;

- D. Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- ii. The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC members. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
 - iii. Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
 - iv. After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - A. It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - B. The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, so that the rates originally quoted by them shall remain open for acceptance in the event of failure of the contemplated negotiation;
 - C. A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 12;
 - D. Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.
- k. **Consideration of Lack of Competition in OTE/GTE and LTE** [Rule 173 (xix) and (xxi) of GFR 2017]: Sometimes, against advertised/limited tender cases, the unit/division may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. Such situation of ‘Single Offer’ is to be treated as Single Tender. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:
- i. The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
 - ii. The qualification criteria were not unduly restrictive; and
 - iii. Prices are reasonable in comparison to market values

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

Unsolicited offers against LTEs should be ignored, however unit/division should register interested firms as per the clause 3.6 and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:

- iv. Inadequate Competition
- v. Non-availability of suitable quotations from empanelled vendors
- vi. Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

I. Cancellation of Procurement Process/Rejection of All Bids/Re-tender [Rule 173 (xix) of GFR 2017]

- i. Unit/division may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:
 - A. If the quantity and quality of requirements have changed substantially or there is an unrectifiable infirmity in the bidding process;
 - B. when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - C. none of the technical Proposals meets the minimum technical qualifying score;
 - D. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders.
 - E. the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
 - F. If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign/acknowledge the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the unit/division shall re-tender the case
- ii. Approval for re-tendering should be accorded by the CA as per DOP of the Company after recording the reasons/proper justification in writing. The decision of the unit/division to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the unit/division is first to check whether, while floating/issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

m. Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all stages of Evaluation

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

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

- i. Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- ii. She/he is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
- iii. The price of the offer is reasonable and consistent with the quality required; and
- iv. The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

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

7.8. Award of Contract

- a. **Purchase Order (PO)/ LoA to Successful Bidder:** For tenders through GeM portal, GeM will forward the contract directly to the successful bidder. In case of contracts outside GeM or release orders against GeM contract, the Yule soft PO / contract should be send to the successful bidder's registered email ID.
- b. Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or e-mail or any other acknowledgeable and fool proof method that his bid has been accepted- In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 days).

In respect of contracts for purchases valued INR 2.5 Lakhs and above, where tender documents include the GCC, SCC and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of Purchase Order/LoA.

- c. **Performance Security:** The supplier receiving the PO/LoA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the supplier.

- d. **Acknowledgement of Purchase Order/Contract by Successful Bidder and Execution:** Successful bidder is notified that their bid has been accepted by sending a Purchase Order(PO)/Contract, incorporating all agreements between the parties.

- e. **Framing of Contract:** The following general principles should be observed while entering into contracts:
 - i. Any PO/agreement shall be issued strictly as per approved TC recommendations, be vetted by the Finance Department and approved by CA as per DOP of the Company. The terms of PO/contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the PO/contract. In other words, no PO/contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Finance Department.
 - ii. All PO/contracts shall contain a provision for
 - A. Recovery of liquidated damages (LD) for delay in performance of the PO/contract on the part of the contractor;
 - B. A warranty clause/defect liability clause should be incorporated in PO/contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/services;
 - C. Risk Purchase Clause
 - D. Force Majeure Clause
 - iii. All PO/contracts for supply of goods should reserve the right to reject goods which do not conform to the specifications;
 - iv. Payment of all applicable taxes by the contractor or supplier; and
 - v. When a PO/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 Company at any time on the expiry of six months' notice to that effect.
 - vi. Standard forms of PO/contracts should be invariably adopted, except in following cases:
 - A. Authorities competent to make purchases may, at their discretion, make purchases of value up to INR 2.5 Lakhs by issuing purchase orders containing basic terms and conditions;
 - B. In cases where standard forms of PO/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

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

7.9. Post Contract Management

After conclusion of the contract, any relaxation in the contract terms/ specifications shall be severely discouraged. However, in exceptional cases, where the modifications/ amendments are considered to be absolutely essential, the same shall be allowed after taking into account the financial implications for the same.

Post Contract Monitoring: The delivery period may be extended on bona fide request and not in a routine and casual manner. In case of delay in supplies by the supplier, the liquidated damages shall be recovered following the terms of 'Liquidated Damages' Clause included in the Purchase Order. Also in case of delay attributable on the part of the vendor, the LC extension charges shall be to vendor account.

8. Rate Contract, Re-tendering and other Procurements with special features

8.1. Rate Contracts

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

- I. **Period of Rate Contract:** The period of a RC should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered. Attempts should also be made to suitably stagger the period of rate contracts throughout the year.

- II. **Salient Features of the Rate Contract:** Any change in the rate after the validity period shall be treated as a fresh rate contract and all the necessary procedures are to be followed. If the concerned department feels it necessary to bring about any change in the rate contract at any time during the validity period, the case is to be put up to the TC with full facts and figures and all the supporting documents as deemed necessary and TC will give their recommendation to the original authority. However, if the rates are changed by Govt. levies/taxes, these may be changed by the purchase department after obtaining valid proof.

- III. **Special Conditions applicable for Rate Contract:** Some conditions of RC differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:
 - i. In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawal is mentioned without any commitment.
 - ii. The purchaser (AYCL) reserves the right to conclude one or more than one rate contract for the same item.
 - iii. The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
 - iv. The purchaser has the option to renegotiate the price with the rate contract holders.
 - v. In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
 - vi. The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies against such supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.
 - vii. The rate contract will be guided by "Fall Clause" (as described later in this chapter).

- IV. **Parallel Rate Contracts:** Generally, a single supplier may not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item at the same terms & condition of the L1 bidder. Such rate contracts are known as Parallel Rate Contracts.

- V. **Conclusion of Rate Contracts including Parallel Rate Contracts:** Techniques for conclusion of rate contract is basically identical to that of parallel contract (as discussed in Chapter 7 clause 7.7.f). In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. Efforts should be made to conclude parallel rate contracts with different suppliers, simultaneously.
- VI. **Cartel Formation/Pool Rates/Bid rigging/Collusive bidding etc.:** Such practices should be severely discouraged with strong measures. Suitable administrative actions like rejecting the offers, reporting the matter to Competition Commission of India, on case to case basis, as decided by the competent authority. The Company may also encourage new firms to get themselves registered to break the monopolistic attitude of the firms giving pool rate/forming cartel. The Company may also debar the tenderers indulging in cartel formation/collusive bidding/bid rigging for a period of two years from participation in the tenders.
- VII. **Fall Clause:** If the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (seven) days' time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the unit/division to keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by the Company etc. However, the provisions of fall clause will however not apply to the following:
- i. Export/Deemed Export by the supplier;
 - ii. Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
 - iii. Sale of goods such as drugs, which have expiry date;
- If such situation arises then the case is to be put up to the TC with full facts and figures and all the supporting documents as deemed necessary and TC will give their recommendation to the original approving authority.
- VIII. **Performance Security:** Unit/division shall consider obtaining Performance Security @ 5% of the value of supply order in the supply orders issued against RCs on the rate contract holder.

- IX. **Renewal of Rate Contracts:** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower. In such situation it should be put up to the TC with full facts and figures along with documentary evidence as deemed necessary and TC will give their recommendation to the original approving authority.

8.2. Re-tendering:

- a. Re-tendering should be resorted to whenever the L1 is higher than the estimated cost (or price) by more than 10%, or in exceptional situations to be recorded in writing and in each such case prior approval is to be taken from the Functional Director/CMD before placing any order.
- b. Re-tendering should also be done if the L-1 bidder fails to sign the procurement contract/fails to provide the required security/otherwise withdraws from the procurement process. However, if the Tender Committee is satisfied that there is no cartelization and the integrity of the procurement process has been maintained, next successful bidder may be offered to match the L-1 offer with detailed recording of the justification.

8.3. Buy Back Offer

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

8.4. Capital Purchases:

- a. The overall proposed capital expenditure would be sanctioned by the board giving details of items of specific expenditure and a lump sum amount for non-specific expenditure. In the case of each capital expenditure, Capital Expenditure Authorisation (CEA) form would have to be used, specimen of which is enclosed as Annexure 19 for obtaining approval for making such capital purchase. The specific budget year to which the proposed expenditure is related has to be mentioned in the CEA Form. All CEA forms covering the Capital Budget of a year shall bear an identifying serial number.

For procurement of any capital equipment under CAPEX of value exceeding Rs.5.0 (Five) lakhs, the technical specification should be referred to a High Powered Technical Committee formed by the Divisional Head (Tea, Electrical and Engineering Division) for recommendation. Quorum shall be of any two members of above committee. The technical committee shall be approved by CMD on recommendation of Whole Time Directors of the Company.

- b. When an overrun in the cost of capital items is expected, and the same is within 10% of the original value the changes in the individual items should be indicated and the concerned Divisional Head will submit the appropriate proposal substantiated by valid reasons through Functional Director to Chairman for approval. For overrun above 10%, the matter would be referred to the Board of Directors for approval. In case of overrun in any project cost sanctioned by Central Govt. is within 10% of the value, the Board of Directors shall have due authority to approve the same. The overrun beyond 10% of the sanctioned cost will, however, require approval of the Board of Directors as well as the parent Ministry in the Central Government.
- c. While deciding upon the specification and make for procurement of any capital equipment, spares to be procured, it should be ensured that the equipment to be purchased shall conform to the latest specification and technology available in the market depending on availability of fund, present infrastructure, etc.
- d. For major overhauling of vehicle/machinery etc. procurement of necessary spares including services shall be made either from respective manufacturers directly or from authorized service dealers on recommendation of the manufacturer. For procurement from any source other than above, sufficient justification has to be given in the proposal with the concurrence of Divisional Head.
- e. In case of Tea Garden, overhauling of transportation vehicles for carrying out day to day operations can be finalized by the Garden Manager and Post-facto approval shall be obtained from General Manager (Tea Division).
- f. **Purchase of IT Equipments:** For all purchase of IT Equipments, tender is to be floated without specifying any brand name. For all such purchases of value above INR 50,000/-, an open tendering system is to be followed; otherwise, the tender notice is to be placed on Central Public Procurement Portal (CPPP) and the Company's Website.

8.5. Turnkey Contract

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

8.6. Back to Back Tie-up:

In case of Turnkey contract, instead of subletting the 100% work received on back-to-back basis, open tendering/ limited tender process as per Purchase Procedure of the Company is to be followed. The Unit,

if and when it bags the contract from the client department as a contractor, has to execute the work by functioning like a contractor instead of subletting the 100% work on back to back basis.

Open tenders to be invited for selection of subcontractors as far as possible. In case it is not possible to invite open tenders, selection should be carried out from the panel approved in the following manner. Panel of contractors list to be prepared for different categories, monetary limits, regions, in a transparent manner clearly publishing the eligibility criteria, etc., such list of contractors shall be put up to the Tender Committee, who after reviewing will recommend to the concerned Divisional Head for approval. On approval by the Divisional Head, this will become the final list and shall remain valid for one year and be reviewed thereafter. However, in the meanwhile, should the list require updating by inclusion of new Contractors or deletion, as the case may be, this would be forwarded by TC for the approval of Unit Head prior to the approval of Divisional Head through CA/ designated Head of Financial Accounts of the Division.

Terms & Conditions of the contract of client particularly those pertaining to subletting of works should be strictly adhered to. Tenders should be opened confidentially by a high level Committee to be formed by the functional Director. Tender opening register to be maintained in this regard, duly signed by the Officer(s) opening the tenders. Adequate staff to be deployed to ensure quality, etc. Post contract monitoring be followed strictly to ensure quality/ delivery/ performance, etc.

8.7. Annual Maintenance Contract (AMC)

- a. Some goods and machinery need proper maintenance for trouble-free service. For this purpose, the unit/division may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier.
- b. The maintenance contract may be entered into either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods.
- c. If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to maintenance in future years are to be discounted (as per DCF technique) to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.
- d. However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.

- e. The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The payment terms for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis.
- f. A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties (liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations.
- g. It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the Company, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period.
- h. A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by them from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill.
- i. If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from 2.5% to 5% of the value of the equipment to be maintained.
- j. Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than INR 1.00 Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the Company's interest.
- k. Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the unit/division to withdraw the maintenance contract due to some

unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below:

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

(Rule 169 of GFR 2017)

8.8. Green Leaf Purchase Procedure

To utilize capacity over and above own leaf production to reduce the fixed cost and to make net profit in Bought Leaf operations.

- a. **Enlistment of Suppliers:** Existing Suppliers i.e. Tea Growers/ Agents to the gardens shall be automatically considered for enlistment if not debarred otherwise and shall be included in the list which shall be for individual gardens duly vetted by Group Accountant in all cases & Group Manager wherever available. Any new applicant can be enlisted by the respective Managers which must be duly vetted by Group Accountant in all cases & also by Group Manager wherever available. The list so prepared shall be considered as the approval list of vendors and a Register of approved vendors should be kept in the garden. Broad parameters for enlistment are given in Para b.
- b. For entering in Register the following details shall be required from Tea Growers/Agents:
 - i. Registration Number and Trade Licence
 - ii. Name, Address, Telephone Number & E-mail, if available.
 - iii. PAN Number
 - iv. Capacity
 - v. Past experience
 - vi. Bank Account details
 - vii. Quality Parameter declaration by the supply
- c. Efforts should be made to enlist growers instead of suppliers/agents.
- d. For Green leaf, Manager of the Estate shall assess requirement of leaf on day to day basis as per the estimated leaf availability from his own garden and bought leaf requirement to meet or exceed the budget quantity upto full utilization capacity.
- e. Enquiry Procedure:
 - i. **For Dooars Gardens:** Enquiry will be made over e-mail / telephone to the enlisted vendors by the Group Accountant in consultation with the respective Garden Managers regarding their inputs on the prevailing market price based on proposal for the purchase of leaf for a specific period and get it endorsed by the Green Leaf Purchase Committee (GLPC), consisting of Garden Manager, Group Accountant and Cluster Head/Group Head, minimum quorum three (3) person and Group Accountant compulsory. In case of absence of any, garden manager, he can nominate acting manager/next in charge, cluster head/group head to be replaced officially.

GLPC should fix price on the basis of Market Price assessed through regular enquiry from the surrounding local Tea Estate producing good quality tea leaf. The same will be forwarded to Head Office Approving Committee(HOAC) consisting of Tea Operation Head, Tea Marketing Head, Tea Finance Head and General Manager (Corporate Finance) for necessary approval. For approving the rate for a particular day minimum three (3) persons consent will be mandatory and in absence of any of the HOAC members, they should nominate the next senior most person. However, such authorization should be only on exceptional circumstances/situation.

- ii. **For Assam Gardens:** Enquiry will be made over e-mail / telephone to the enlisted vendors by the respective Garden Manager in consultation with the Group Head discuss the rate after assessing the market and then prepare the proposal along with one of his Asst/Dy Manager which will be then forwarded to the Green Leaf Purchase Committee, consisting of Garden Manager, Group Accountant and Cluster Head/Group Head. GLPC should fix price on the basis of Market Price assessed through regular enquiry from the surrounding local Tea Estate producing good quality tea leaf. The same will be forwarded to HOAC members for approval where 60% quorum should be considered as sufficient to approve the same. Rest of the procedure will be same as for dooars gardens.
- iii. For both Dooars & Assam:
 - A. While fixing the rate of green leaf prevailing sale rate of finished tea in the market shall also be analysed to safe guard against any possibility of negative margin.
 - B. GLPC may if necessary propose for multiple rates for different band of fine leaf count and quality.
 - C. The HOAC approves the Bought leaf rate, quality including FL count based on and finally informs the garden to procure the leaf at that rate & FLC.
 - D. Supply can be obtained from all or any of the parties who are enlisted & who are agreeable to supply at the agreed rate for the day subject to meeting at par minimum acceptable quality.
 - E. At regular intervals, the price & minimum Fine Leaf Count (FLC)% is fixed by the Green Leaf Purchase Committee(GLPC), based on the available rates & quality of leaf prevailing at the bought leaf market / Mandi. Sometimes, multiple rates/FLC is also fixed based on the availability of quality of green leaf at the Mandi. All these activities have to have bottom line objective of buying quality leaf at reasonable price keeping in view of the prevailing sale price of made tea with objective to make positive margins.
 - F. Bought leaf Weight Measurement:
 - i) If the weight measurement is done at the garden of bought leaf supplier's premises, weight has again to be taken at our garden in presence of minimum two (2) officers.
 - ii) The following real time photographic evidences must be kept for each batch of bought leaf weighment-
 1. The front portion of the green leaf vehicle with registration number with the leaf just after final loading at the supplier's place.
 2. The front portion of the green leaf vehicle with registration number with the leaf just after placing the same in the centre portion of the Weigh Bridge at our factory.
 3. The rear side of the vehicle along with the leaf at the Weigh Bridge.
 4. The display of the digital scale including Gross, tare and nett weight of each vehicle

5. All the photos are to be forwarded to HO via email in a folder at gm.tea@aycl.com and the whatsapp group initially everyday until an App is been developed.
- iii) In case of variations, lower of two weight shall be taken for payment purpose. In case it is not possible to do so in the consignment in question, same shall be adjusted in next consignment.
- iv) A Register in the following format shall be made where the type of vehicle and in and out time of each vehicle should be maintained.

NAMES OF THE GARDEN:

SL No.	Date	Name of the Parties/ Agencies contacted	Price suggested by Agent/ Vendor	Price Fixed	Advice of Head Office	Remarks	Signature
1	2	3	4	5	6	7	8

f. Execution Process:

- i. For green leaf suppliers who are agreeable to the rates and quality recommended by the GLPC and the intimation shall be sent through telephonic message /mail / WhatsApp and the green leaf supplier shall supply on the basis of mail and WhatsApp order placed followed by formal Purchase Order.
- ii. Further, if E-mail facilities are available, the acceptance of the rate and LOI can be sent by e-mail to the respective vendor/vendors which shall be followed by the formal approval by HOAC confirmatory Purchase Order / Orders.
- iii. For Green Leaf Purchase, no EMD need to be deposited because it is not practically not possible owing to the market operating conditions.

g. Purchase Order: Purchase Order must include the following:

- iv. Period of supply: May be daily/weekly/Periodic
- v. Estimated quantity to be supplied daily/weekly/Periodic
- vi. Acceptable minimum Fine leaf count. (Should be logical, rational within range and not arbitrary).
- vii. Deduction due to wet leaf / damaged leaf supply. (If possible it can be uniform across gardens)
- viii. Deduction of tax if applicable.
- ix. Weighment condition (own weigh-bridge).
- x. Return of consignment in case of unacceptable leaf condition at the time of receipt in the factory.
- xi. Rates: FOR garden factory.
- xii. Quality parameters with acceptable deviations.

h. Cancellation of P.O. may be made by the Garden Manager/Garden in Charge/Cluster Head/ Group Head on the basis of valid reasons only and the details of the same shall be recorded and informed to the Cluster Head/Garden head and the Committee at H.O. on weekly/monthly basis as required.

i. Vehicle Details (Registration No etc.) used for transportation of green leaf of suppliers should be recorded on daily basis and accordingly it should be mentioned in challan along with IN & OUT time.

- j. At the end of every week, green leaf suppliers prepare their bill based on the supply at the garden & submit the same (along with relevant challans) to the garden for processing & payment. The bills are passed by the Garden executive as per standard procedure verifying all the necessary details & release payment as per fund availability and priority.
- k. The dues on account of bought leaf is intimated to the group office on a weekly basis in a prescribed format mentioning vendor wise details like quantity of leaf, rate of procurement, Challan number, Bill number & the total amount due.
- l. Group office verifies & compiles the data as received from the gardens & to forward the same to Head Office for necessary remittance.
- m. Payment to green leaf suppliers to be made as per standard norms /agreed payment terms depending upon availability of fund and priority.
- n. Payment to the vendors shall be done through RTGS/NEFT or by A/C payee cheque.
- o. Bought Leaf Account: Bought Leaf account shall be maintained separately both at H.O level and garden level/group Office level and the fund allocated for bought leaf should not be utilized for any other purpose without the approval of General Manager (F&A) who in turn shall take consent of Director (Finance) and CMD. Said fund will be provided only once and thereafter the fund shall be rolled in such a manner that payments are released for next round of dues from the realization of made tea and bought leaf operations shall run uninterrupted.
- p. Associate suppliers: Both West Bengal region and Assam region should try to identify and develop minimum three and five associate suppliers respectively who are manufacturing quality teas to have forward contract kind of arrangement on the same lines as being done by mostly private players with an objective to have uninterrupted and quality green leaf supply at most reasonable price. Private buyers are providing financial support to have this kind of arrangements, however AYCL can explore non-financial technical knowhow and hand holding support. This responsibility shall be taken by the garden Manager/Cluster Head jointly with Group Head playing a lead role.

9. Contract Management

9.1. The Purpose of Contract Management

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the PO/contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved and any problems are identified and resolved in a timely manner. Normally, the following issues are handled during this phase:

- a. Amendments to the contract;
- b. Operation of the option clause;
- c. Safeguards for handing over of materials/equipment to contractors;
- d. Payments to the contractor and handling of securities;
- e. Monitoring of supplier performance;
- f. Delays in performance of the contract;
- g. Breach of contract, remedies and termination of contract;
- h. Dispute resolution;
- i. Contract closure upon completion;
- j. Goods receiving;
- k. Quality assurance;
- l. Accounted and payment of bills; and
- m. Storage and issue of inspected goods.

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

9.2. Amendment to the PO/Contract

- a. Once a PO/contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Requests for such changes and modifications mostly emanate from the supplier. An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:
 - i. Increase or decrease in the quantity required, exercise of quantity option clause;
 - ii. Changes in schedule of deliveries and terms of delivery;
 - iii. Changes in inspection arrangements;
 - iv. Changes in terms of payments and statutory levies; and
 - v. Change due to any other situation not anticipated.
- b. Amendments to PO/contract involving changes in specification, quantity, price, place of delivery etc., shall not be normally undertaken. Where amendments cannot be avoided the same can be undertaken with full justification subject to compliance of the following:

- i. Change in specification, if any, shall be minor in nature, duly vetted by the concerned technical head. The change of specification shall not affect the performance of product, tender specification and the sanctity of the tender and without any price increase.
 - ii. In regard to change in quantity, price etc., it shall be ensured that these changes do not result in acceptance of less favourable condition and that the financial implication should be clearly brought out in proposal seeking the change. Such proposal must be financially concurred before approval.
Such amendment shall be approved by an authority one level higher than the authority who approved the original purchase proposal.
 - iii. The financial benefit arising out of such amendments to the specification shall be brought out and such benefit gained by the suppliers shall be passed on to the Purchasers.
- c. Should the quantity and/or price involve amounts above 10% of the original PO/contract value, proposal for amendment of PO/contract would be put up to TC by purchase department, who will, after scrutiny, recommend amendment of PO/contract to appropriate authority as above duly intimating the original approving authority and obtain approval before amendment in PO/contract is affected. However, the total PO/contract value after amendment of rates should not exceed the L2 value. This will not be applicable for change in statutory levies.
- d. No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

9.3. Operation of Option Clause

- a. Option Clause:** Under this clause, the unit/division retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the PO/contract and ideally should not exceed 25%.

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above INR 10.00 lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

“The Purchaser reserves the right to increase or decrease the quantity to be ordered up to 25 percent of bid quantity at the time of placement of contract. The purchaser also reserves the right to increase the ordered quantity by up to 25% of the contracted quantity during the currency of the contract at the contracted rates. Bidders are bound to accept the orders accordingly”

- b. Conditions Governing Operation of Option Clause:** Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:
- i. In case of decrease in the ordered quantity, it would be fair to allow the firm to supply work-in-progress or goods already put up for inspection;

- ii. There should be no declining trend in the price of the stores as evidenced from the fact that no order has since been placed at lower rates and no tender has been opened since the time offers have been received at lower rates – even if not finalised;
- iii. If the option clause exists, during provisioning of the next cycle and during tender evaluation in the next cycle of procurement, application of the option clause must be positively taken into account. The unit/division must also keep a watch on delivery against PO/contract, if other conditions are satisfied, the option clause must be exercised;
- iv. The option clause is normally exercised after receipt of 50% quantity but if the delivery period is going to expire and other conditions are fulfilled, it can be exercised even earlier;
- v. The option clause shall be exercised during the currency of the contract such that the contractor has reasonable time/notice for executing such an increase and can be exercised even if the original ordered quantity is completed before the original last date of delivery. If not already agreed upon, the delivery period shall be fixed for the additional quantity on the lines of the delivery period in the original order. This will satisfy the requirement of giving reasonable notice to the supplier to exercise the option clause;
- vi. There should be no option clause in development orders;
- vii. This provision can also be exercised in case of PAC/single supplier OEM cases; and
- viii. However, where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

9.4. Payments to the Contractor and Handling of Securities

- a. It should be ensured that all payments due to the firm, including release of the performance security/BG, are made on a priority basis without avoidable delay as per the tender/PO conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.
- b. Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed.

9.5. Monitoring of Supplier Performance

Monitoring should ensure that suppliers adhere to PO terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices etc.) and any problems are identified and resolved in a timely manner.

9.6. Delays in Performance of Contract

- a. **Delivery Period:** The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. In case of items such as raw material which is delivered distributed over a time period, a delivery schedule of supply should be specified. In such cases that there may be a slight deviation from such schedule of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond +/- 10% in any calendar month; or +/- 7% cumulative in any calendar quarter; or +/- 5%

cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

Unless otherwise agreed, the buyer of goods is not bound to accept the delivery thereof in instalments.

- b. **Terms of Delivery:** Terms of delivery (FOR, FOB, CIF, and CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms. Chapter 6 has more details in this regard.
- c. **Severable and Entire Delivery Contracts:** Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. However, a variation of 5% of the contract quantity may be exempted in the contract conditions. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

Contracts with clearly laid out instalment deliveries mentioning the exact dates and where each instalment is paid for separately are known as severable contracts. In effect, each of such instalments is a separate independent contract by itself. In severable contracts, delay or breach of one instalment does not affect other instalments. In the case of severable contracts, extension in the delivery period is necessary for each instalment separately.

Since the mention of monthly/quarterly rate of delivery, called delivery schedule, is not sufficient to make it a severable contract. However, instalments specifying exact dates *i.e. 310 Nos by June 20, 2016* would be amounting to a severable contract.

The delivery cannot be re-fixed to make a contract a 'severable' contract without the specific agreement of the supplier, if the delivery originally stipulated in the contract was in the form of an 'entire' contract.

- d. **Extension of Delivery:** Suppliers shall be required to adhere to the delivery schedule specified in the PO and, if there is delay in supplies, LD shall be levied wherever there is failure by the party.

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, they shall promptly inform the concerned officer in writing. They should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, the unit/division shall examine the proposal (refer to Annexure 15) and, on approval of the the Competent Authority approving the original order, may agree to extend the delivery schedule, with or without LD and with or without the denial clause (as defined in Para 9.7.8 below), for completion of the contractor's contractual obligations, provided:

- i. That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
- ii. That there is no falling trend in prices for this item as evidenced from the fact that, in the intervening period, neither orders have been placed at rates lower than this contract nor any tender been opened where such rates have been received even though the tender is not yet decided. In cases of certain raw material supplies, where prices are linked to the PVC, extension may be granted even in case of a falling trend in price indices, since the purchaser's interests are protected by the price variation mechanism. However, in such cases it should be ensured that extensions are done with the denial clause.

When it is decided to extend the delivery period subject to recovery of LD for delay in supplies, contractors must be given a warning to this effect in writing at the time of granting extensions. It is not correct to grant extensions without any mention of the LD if it is proposed to recover such charges eventually. It is also not correct to grant an extension of the delivery period by merely stating that the extension is granted "without prejudice to the rights of the purchaser under the terms and conditions of the contract" as this would mean that all the options given in the conditions of the contract would be available to the purchaser on expiry of the extended delivery period and would not amount to exercise of the option to recover LD. To take care of complex legalities brought out above, extension of the delivery period when granted should only be done in writing in the laid down format given in Annexure 16.

- e. **Delay in Supplies for which Supplier is not Responsible:** Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:
 - i. Cases where delay/non-payment in advance payment from the client/customer or delay in approving drawing on client/customer part or delaying in providing manufacturing clearance from the client/customer or so on.;
 - ii. Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and

In such situations, extension of the delivery may be granted and the justification with proper documentary evidence and signature of concern official should be recorded in the respective procurement file.

- iii. Where the delay is entirely on the part of the unit/division.
In such situation proposal for extension of delivery period to be recommended by the TC for approval of the Competent Authority approving the original order.

- f. **Performance Notice:** A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the unit/division and the unit/division does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial

clauses, and so on, along identical lines as in para 9.7.d above. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above. The text of the performance notice will be on similar lines to the Annexure 16.

- g. **Force Majeure Clause:** 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 unit/division only. In such a situation, the unit/division 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 days, either party may at its option terminate the contract without any financial repercussion on either side.

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.

- h. **Denial Clause:** Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period. The format of the denial clause is available in Annexure19.
- i. **Liquidated Damages (LD):** Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply.
- j. **Quantum of LD:** While granting extension of the delivery period, where the delivery or any instalment thereof is accepted after expiry of the original delivery period, the unit/division may recover from the contractor, as agreed, the LD a sum equivalent to 0.5% of the prices of any portion of goods delivered late, for each week or part thereof of delay. The total damages shall not exceed 10% of the value of delayed goods or in-line with customer's order. The LD cannot exceed the amount stipulated in the contract.

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

In the case of development/indigenisation contracts, LDs are not levied. However, the nature of such contracts should be declared at the time of placing them.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

- k. **Waiver of LD:** There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly being an exception rather than a rule.

In cases where such extension is entirely on the part of the client or/and client has waived the LD, such cases approval of the Competent Authority (originally approved the tender decision) through the TC to be taken with proper justifications along with documentary evidences.

9.7. Breach of Contract, Remedies and Termination:

In case the contractor is unable to honour important stipulations of the PO/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 supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects the Company seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 17. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. Contract may also be terminated, for this a proposal may be routed through the TC for approval to the Competent Authority (originally approving the tender document). Contract may be terminated in the following cases:

a. **Cancellation of Contract for Default: Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be terminated in whole or in part:**

- i. If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii. If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
- iii. 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, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
 - C. However, the supplier 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.

b. **Termination of Contract:** If the supplier becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which they were selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Company.

c. **Termination of Contract for Convenience:** After placement of the contract, there may be an unforeseen situation compelling unit/division to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for unit/division's convenience, inter alia, indicating the date with effect from which the termination will become effective. This is not Company's legal right– the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the supplier may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be to be incorporated in the tender document as well as in the resultant contract.

9.8. Dispute Resolution:

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the parties. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties. The mode of settlement of such disputes/ differences should be through arbitration. However, when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual discussion, mediation, and conciliation. If the parties fail to resolve the dispute within 21 days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996 [Amended 2015 and 2021]. While processing a case for dispute resolution/litigation/arbitration, the Company is to take legal advice, at appropriate stages.

- a. **Arbitration Clause:** If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. The venue of arbitration should be Kolkata Jurisdiction.

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. 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 reviewed. In cases where there is a decision against 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 Company.
- iii. The Company 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 as per approval of the Competent Authority 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 higher interest rates. This results in huge financial losses to the Company. Hence, in aggregate, it is in Company's 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 AYCL.

- b. **Foreign Arbitration:** The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

c. **Arbitration Awards**

- i. In cases where the Company 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 Company 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 Company 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 Company as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Company may be allowed to be used by the contractor concessionaire with the prior approval of the lead banker and the Company. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.

9.9. Goods Receiving

- a. **Transportation of Goods:** Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transshipment and, if necessary, provision of escorts. In case of chemicals, powdery materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard. In case transport is arranged by unit/division, suitable instructions may be incorporated in the transportation contract accordingly.

Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, unit/division shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to unit/division and not "self". The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, i.e. railway/lorry receipt, goods consignment note, airway bill, invoices, packing list,

freight memos, test certificate, and so on, shall be sent to the Purchase/Finance/Official concerned which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

- b. **Distribution of Dispatch Documents for Clearance/Receipt of Goods:** The supplier shall send all the relevant dispatch documents well in time to the purchaser (AYCL) to enable the purchaser to clear or receive (as the case may be) the goods in terms of the contract. Necessary instructions for this purpose are to be incorporated in the contract. Within 24 hours of dispatch, the supplier shall notify the purchaser or consignee (others concerned), the complete details of dispatch and also supply the following documents by registered post/speed post/air mail/courier/personal messenger.

The supplier should submit five/requisite copies of their invoice. The invoices must be pre-stamped and shall indicate the details of the lorry receipt or railway receipt number, as the case may be, and also the details of the packing list and items dispatched. The invoice must also indicate the purchase order number and date, unit rate and net total price; the packing list shall include the total weight of the consignment and items dispatched. All documents are to be duly signed by the supplier's representative. Bank charges towards processing of the bills for payment shall be as per terms and conditions of the purchase order.

- c. **Receipt of Consignment:** At the time of the delivery at the stores/user department, the official concerned should receive the goods on a "subject to inspection" basis and should issue the preliminary receipt after a preliminary inspection as an acknowledgement of having received the claimed quantity (not the quality) of consignment

i. **Preliminary Inspection on Receipt:** On opening the packages (if applicable), the storekeeper/official concerned should initiate preliminary inspection of the goods received. This should include checks for any obvious damage in transit and other physical or visual checks specific to the functional characteristics of the product. The quantity of the goods received should also be verified at this stage against the purchase order and the supplier's invoice. When goods are supplied in boxes, bundles or coils as in the case of tools, rope, canvas, and so on, each of which is required to contain a specified quantity, a reasonable number of such packages should be opened up and checked for quantity per package. The quantity received should also be mentioned in the preliminary receipt to be given to the supplier. Any discrepancies in packages or quantity should be mentioned therein.

ii. **Detailed Inspection on Receipt:** Before accepting the ordered goods, the storekeeper/ official concerned must ensure that the goods have been manufactured as per the required specifications and are capable of performing the functions as specified in the contract. To achieve this, the tender document and the subsequent contract should include references to standards or specifications that specify the details of inspection and tests to be carried out and stages and manner of carrying out these tests.

The required inspections and tests should be carried out by personnel from the Quality Assurance Department/technically qualified and competent personnel. If the unit/division does not have such qualified personnel, it may engage competent personnel from other unit/division or even outside agencies.

9.10. Quality Assurance and Inspection

The Quality Assurance (QA) process of the individual units/divisions or as notified by the client may be followed.

9.11. Accounting and Payment of Received Materials

- a. **Goods Receipt and Inspection Report/Goods Receipt Notes:** If the received material successfully passes the quantity and quality checks, accounting of material received shall be on the basis of the Goods Receipt and Inspection Report (GRIR) Goods/Receipt Notes (GRN) (Annexure 18) prepared after inspection and acceptance of the material which will be signed by the concerned officers. This includes cases where payment is made to the supplier on proof of dispatch, for which inspection at the suppliers' premises is conducted by an authorised officer of unit/division prior to dispatch by suppliers. This excludes cases of imported materials where accounting will be done on completion of certain further formalities as per regulations and practices. While preliminary receipt is only an acknowledgement of quantity received, GRIR/GRN is an acknowledgement of receipt of the correct quantity as well as quality of goods. GRIR/GRN is a voucher which forms the basis for the supplier to claim payment as per the contract. It also is a voucher for accountable of the received material in the inventory accounts. Along with the GRIR/GRN, material is handed over to the warehouse where it is to be stored.

In case the received material fails to pass quantity and quality checks, a rejection GRIR/GRN is issued, noting the reasons for rejection. If feasible, a yellow paint mark should be put on the rejected material to prevent its resubmission by the supplier. The F&A Department should be asked to recover any advance payment or freight charges paid for the rejected quantity. The rejection GRIR contains instructions for the supplier to take back the rejected goods within a stipulated number of days (usually 21). Such removal should be permitted only after the advance payment/freight paid is recovered. Lots that are under inspection, accepted, or rejected should be properly tagged, segregated and identified.

- b. **Passing of Supplier's Bills:** After the GRIR/GRN is issued, the invoice is received from the supplier, supported by relevant documents evidencing award of purchase orders/contracts and receipt of materials/services. Based on contractual terms where payments are made based on proof of dispatch against a purchase order, bills shall be passed and accounted based on the GRIR/GRN of approved materials. The invoice submitted by the supplier will be verified and signed by the indenting officer/Purchase Officer/Official concerned, and pay voucher will be prepared by the unit/division and signed by an officer authorised to sign pay-orders. All correspondence with the supplier will be handled by user department.

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

10. Disposal of Scrap Goods

10.1. Scrap for Disposal

A large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the Company and may command a fair price in the market not normally associated with scrap. A Scrap Disposal policy is attached in Annexure 20.

10.2. Classification and Categorisation

It is very important to categorise the scrapped items under different trade groups based on the use to which the scrap purchaser can put it for commercial use. Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

10.3. Survey of Materials for Classifying as Scrap for Disposal

- a. Competent Authority as per DOP of the Company to declare and dispose off Scrap Material following a laid down procedure, based on the 'Book Value' or 5% of the Original/Market Value of new goods, if Book value is either not available or has become negligible. Before any item of stores can be sold as 'scrap', it should be declared as such by the Scrap Committee (SC) appointed by the Functional Director/CMD and the sanction of the CA obtained for such a sale. The CA may relax this need for survey by SC, as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value i.e. INR 5,000/-. Lots of small value may also not require to be condemned by SC, on which the Functional Director/CMD may be given powers to declare such materials as scrap without scrap committee. However, this dispensation is subject to furnishing of a certificate by the concerned Departmental officer as laid down procedure that the items being offered have been inspected by him personally and found unserviceable and unfit for any further use.
- b. Survey of Scrap: Generally, items may be identified as scrap in any of the following cases:
 - i. Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment; and
 - ii. The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.
 - iii. The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the SC.
 - iv. SC may seek the approval of the CA with the concurrence of the unit/division/corporate finance department."

10.4. Modes of Disposal

The mode of disposal may be determined by the CA on the recommendation of SC, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:

- a. Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of INR 5,000/- in each case may be sold directly to the local scrap dealers on a summary quotation basis; and

- b. Scrap upto INR 2.00 lakhs may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.
- c. Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above INR 2.00 lakhs. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;
- d. Certain useable machinery/spare may still be useable by other Ministries/ Departments/ PSUs; these should be disposed at book value plus 20% (7.5% freight +12.5% handling charges) directly to the concerned organisation.
- e. **Sales by Submission of Tenders:** This method of sale is particularly suitable where it is proposed to dispose the 'overstocks' and surplus stores' which are in fit to use condition.
- f. Scrap which is a security or safety risk (stamps, negotiable instruments, money value documents) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) in the presence of a committee after obtaining CA's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.
- g. Sale of hazardous waste items would be governed by the following procedures in addition to guidelines/notifications issued by the Central Pollution Control Board (CPCB)/Ministry of Environment and Forests (MoEF) from time to time:
 - i. Sale of old batteries/lead acid batteries will be governed by the Batteries (Management & Handling) Rules, 2001 or as amended from time to time;
 - ii. Sale of other categories of hazardous waste items will be governed by the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time;
 - iii. Sale of e-waste shall be governed by E-Waste (Management) Rules, 2016 or as amended from time to time;
 - iv. Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In case of lead acid batteries, used/waste oils and nonferrous metal wastes, in addition to submitting necessary valid registration from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEF); and
 - v. In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC from the concerned SPCB, with whom the buyer is registered, to the seller before taking delivery, failing which the buyer will be responsible for the consequences and the seller shall take further decision as may be deemed fit.

10.5. Preparation for Disposal

Scrap recommended for disposal should be segregated from other materials into an identifiable lot. It should be marked as such with a board, indicating the lot number and brief description. Valuable scrap such as non-ferrous metals should be secured in lockable rooms.

- a. **Determining Reserve Price:** In any mode of disposal, material should not be sold at rates per lot but bids should be registered by rate per unit (number, length or weight) so that a complete check on the quantity delivered can be exercised, at any time. The Unit Head/Functional Director holding the

stock may determine the reserve price with the concurrence of the unit/division/corporate finance and approval of CA. In case of large value disposals, a Reserve Price Committee may be appointed to recommend the reserve price. The use of external costing experts, price databases, price indices and data sharing may be done in the same manner as detailed in Chapter 2 relating to the reasonableness for procurement prices. Large newspapers and economic dailies have dedicated sections dealing with rates in the scrap market. The reserve price should be recorded on a page numbered register in advance of the date of disposal and kept in safe custody. The sealed register should be opened just before the e-auction creation/tender opening. Some methods for determining reserve prices are:

- i. Book value with depreciation. In case the Book value is not available or has become insignificant, the reserve price may be based on 5% of the Original/Market cost of the new item;
- ii. Last sale price moderated by quantity, quality, location, market condition, price trend of various metals, and so on;
- iii. Prevailing market price ascertained through a market survey or quotation from approved agency.
- iv. Costing analysis based on costs of various elements of the item (discounted for melting losses) labour charges and transportation cost, etc.
- v. In cases where the reserve price cannot be fixed as per the laid down procedure an Insurance Regulatory and Development Authority (IRDA)-approved valuer may be engaged for valuation of such material and the Reserve Price Committee will take into account the valuation given by the valuer while recommending the reserve price.

10.6. Conditions of Disposal Applicable to all Modes of Disposal

- a. **As-Is-Where-Is' basis:** Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e- auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.
- b. **Inspection by Bidders:** In view of the 'as-is-where-is' condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or their authorised representative may inspect the materials as per the inspection schedule mentioned with the prior permission from the contact person, as given in the auction details.
- c. **Right to Reject all Bids:** The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The

seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

- d. **GST and Taxes:** Any statutory variations in the rate of taxes/duties are to be borne by the purchaser. GST rates indicated in the e-auction catalogue or Tender advertisement are only indicative and the actual GST rates as applicable on the date shall be payable by the successful bidders directly to the seller at the time of taking delivery of materials.. In order to avoid the imposition of penalty, the amount deposited by the successful bidder towards taxes and duties will be immediately deposited with the concerned tax authorities without waiting for the actual delivery.

10.7. Disposal through Tender

Disposal through tender could take place through the e-procurement portal or normal tendering. In the bidding documents, General Conditions of Sale (GCS, in place of GCC in procurement tenders) may be laid out. The broad steps to be adopted for this purpose are:

- a. Preparation of bidding documents;
- b. Invitation of tender for the surplus goods to be sold;
- c. Opening of bids;
- d. Analysis and evaluation of bids received;
- e. Selection of the highest responsive bidder;
- f. Collection of sale value from the selected bidder;
- g. Issue of sale release order to the selected bidder;
- h. Release of the sold surplus goods to the selected bidder; and
- i. Return of bid security to the unsuccessful bidders.
- j. Any special conditions of contract for each lot may also be given. Important aspects to be kept in view while disposing the goods through an advertised tender are:
 - i. The basic principle for sale of such goods through an advertised tender is ensuring transparency, competition, fairness and elimination of discretion. Wide publicity should be ensured of the sale plan and the goods to be sold;
 - ii. All required terms and conditions of sale are to be incorporated in the bidding document comprehensively in plain and simple language. The applicability of taxes, as relevant, should be clearly stated in the document. The bidding document should also indicate the location and present condition of the goods to be sold so that the bidders can inspect the goods before bidding;
 - iii. Bidders should be asked to furnish bid security (EMD) along with their bids. The amount of bid security should ordinarily be 5% of the assessed or reserved price of the goods. The exact bid security amount should be indicated in the bidding document. The EMD shall be forfeited if the tenderer unilaterally withdraws, amends, impairs or derogates from his offer in any respect within the period of validity of his offer;
 - iv. Late bids, that is, bids received after the specified date and time of receipt should not to be considered;
 - v. The bid of the highest acceptable responsive bidder should normally be accepted and an acceptance/sale order be issued. However, if the price offered by that bidder is not acceptable, a negotiation may be held only with that bidder;

- vi. In case the selected bidder does not show interest in depositing the balance sale value or in lifting the goods, the bid security should be forfeited and other actions initiated including resale of the goods in question at the risk and cost of the defaulter;
- vii. In case the total quantity to be disposed cannot be taken up by the highest acceptable bidder, the remaining quantity may be offered to the next higher bidder(s) at the price offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;
- viii. If the tenderer's offer is not accepted, the tenderer's EMD shall be refunded to them. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall remain with the disposing unit/division till payment of the SD money has been made. It may be adjusted as part of the total SD money at the discretion of disposing unit/division;
- ix. The offer should be examined by the competent level of Tender Committee as per laid down procedure and TC recommendations should be accepted by the Competent Authority as per the laid down procedure;
- x. The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);
- xi. Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25% of the total sale value of the contract or as recommended by the TC and CA at the time of the approval of tender document within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank draft/pay order, drawn on any of the commercial bank in favour of officer concerned as mentioned in the NIT;
- xii. BSV: The successful bidder in an e-auction or tender sale may be allowed 15 calendar days (including the date of acceptance letter/sale order) for payment of BSV. The Unit Head (or the Officer delegated) after taking into consideration the prevailing market rates and trends, may grant an extension of time for the payment of BSV with late payment charges @ 1% per week or part thereof up to 2 weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and;
- xiii. Delivery Order: Delivery Order is an essential document required to be produced to take delivery of the material from the custodian and therefore after depositing BSV, the Delivery Order should be issued and the delivery should be made to purchaser or Their agent on the strength of the Delivery Order and after verifying receipt of the due payments.

10.8. Disposal through Auction

- a. Unit/division may undertake auction of goods to be disposed of either directly or through approved auctioneers;
- b. The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender;

- c. While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders;
- d. During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25% of the bid value or as recommended by the TC and CA at the time of the approval of tender document) should immediately be taken on the spot from the successful bidder in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders;
- e. The composition of the auction team will be decided by the CA. The team should preferably include an officer of the finance department and a representative from purchase or stores.

10.9. Disposal at scrap value or by other modes

If the unit/division is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, it may dispose it off at its scrap value with the approval of the CA in consultation with its the unit/division finance department & TC. In case the unit/division is unable to sell the item even at its scrap value, it may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

10.10. Delivery of Sold Material

- i. **Free Delivery Time and Ground Rent:** Delivery has to be taken within 30 calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order. If the purchaser is not able to lift the material within the free delivery period, he may request for an extension. Such extensions are generally granted after levying a ground rent @ 1/2 (half) per cent of the sale value per day. But, in some genuine cases, the levy of ground rent may be waived with the approval of the CA as recommended TC with all supporting documents. An accounts representative will be responsible for seeing that when the ground rent has become due. The amount realised as ground rent should be noted in the issue note by the stock holder and certified by the stock verifier. The stock-holder will be responsible for remitting the amount and obtaining a receipt.
- ii. **All Risks to the Buyer:** The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of their offer. The seller will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. Lots are put up for sale, subject to change by nature's wear and tear. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.
- iii. **Terms of Delivery:** No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. In used/waste oil, separation of oil and water, and so on, shall not be allowed at the site. If these actions are allowed, there is possibility of leakages. In mixed lots, the buyer may take undue advantage by leaving cheaper components behind. If whole machinery is sold and cutting and breaking is allowed, it would be difficult to ensure that the purchaser is taking out only his own cut

material and no other unsold material or from other scrap lots. If any foreign materials are found to be mixed in the lot, other than the items included in the auction catalogue and acceptance letter/sale order, the seller reserves the right to remove them at the time of delivery. The buyer shall not be entitled to re-sell an item, lot or part of a lot while the goods are still lying within the premises of the seller and any such sale or assignment of the buyer's right to the material sold in an auction will not be recognised. All documents for releasing materials will be made out in the name of the buyer only.

The material will be delivered only to the successful bidder or their authorised representatives against the presentation of the buyer's identity proof/authorization letter.

- iv. **Default by Seller:** The seller will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.
- v. **Default by Buyer:** Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as it deems fit without any notice.
- vi. **Witnessing Delivery:** All materials sold shall be weighed or counted before delivery, this being supervised by the:
 - i. Stock-holder's representative;
 - ii. Accounts representative – stock-verifier;
 - iii. Representative of the purchaser
 - iv. Representative of the technical department (if required)
- vii. **Variation in Available Quantity:** At the time of delivery, the actual quantity may vary from the quantity mentioned in the delivery order. In case of excess available material, the seller reserves the right to retain material in excess of quantity in the lot at its discretion. The purchaser may be allowed to lift the additional quantity after making the requisite additional payment to the seller.

If the quantity in a lot on actual weightment or count is less than the announced quantity, the seller will not make good the deficiency under any circumstances. The purchaser thereof will be entitled to obtain a refund for the undelivered quantity at the quoted rate. No interest will be paid on the amount of short delivered quantity. The reasons for shortfall should be recorded by the SC and the Unit Head. Any refund in this regard will be made with the Unit Head's recommendation, Finance's concurrence and CA' approval. Copies of the weightment slip will be the base for determining the refund amount. It may be necessary to look into the ledgers for the total quantity held by the stock-holder and particularly so in the case of non-ferrous scrap; the item concerned may have to be processed for special stock verification. In case of a short delivery of the material, the refund of taxes will be the responsibility of the successful bidder only.

- viii. **Conclusion of Delivery:** The seller's responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. The seller will be no party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted. Such "left over" stock may be transferred to fresh scrap of similar description. At the conclusion, a report of sale account of goods disposed has to be submitted to the Competent Authority and Director (Finance), to show that only the material paid for (and nothing else) has been disposed of and that all payments due (and nothing less) have been credited to the relevant accounts.

10.11. Procedure for Adjustment of Sale Proceeds in the Books of Accounts

The following procedure may be followed for adjustment of sale proceeds in the books of accounts:

- a. If the realised price is more than the book value, the sale proceeds should first be applied towards the Head of Finance & Accounts in which the book value is lying, and the remaining portion should be treated as "profit on sale of capital asset"; and
- b. If the realised price is less than the book value, it should be apportioned in the ratio of the reserve price of the equipment and that of the spares. In this case, the CA's sanction to write off the difference between the book value and the realised price would be necessary.

Annexure 1: Integrity Pact

INTEGRITY PACT AGREEMENT

Andrew Yule & Company Limited (AYCL), having its Registered Office at "Yule House", 8 Dr. Rajendra Prasad Sarani, Kolkata 700001, hereinafter referred to as "**The Principal**".

And

..... having its Registered Office at.....here in after referred to as "**Bidder /Contractor /Supplier /Purchaser /Service Provider**".

Preamble

The Principal intends to award contract to Bidder/ Contractor/ Supplier/Purchaser/Service Provider under laid down organizational procedure, the contract for sale/ purchase of materials / goods as have been mentioned in the Purchase Order of the award and/or for obtaining service of whatever nature from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider etc. the principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and fairness/transparency in relation to the said award with the said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider.

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will during the tender process treat all **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** with equity and reason. The Principal will in particular, before and during the tender process, provide all necessary and appropriate technical, legal and administrative information related to the contract to all the said **Bidder/ Contractor/ Supplier/ Purchaser/ Service Providers** the same information and will not provide to **Bidder/ Contractor/ Supplier/ Purchaser/Service Provider any confidential / additional information through which the said Bidder/ Contractor/ Supplier/ Purchaser/Service Provider could obtain an unfair advantage in relation to the process or the contract execution.**
 - c. The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information relating to the conduct of any of its employees which is a criminal offence under the relevant anti-corruption laws in India or there be any substantive suspicion in this

regard, the principal will inform its Chief Vigilance Officer/Vigilance Department and in addition can initiate disciplinary action.

Section 2: Commitments of the Bidder/ Contractor/ Supplier / Purchaser/ Service Provider.

1. The **Bidder/ Contractor/ Supplier/Purchaser/ Service Provider** commit to take all measures necessary to prevent corruption. It commits itself to observe the following principles during its participation in the tender process and during the contract execution.
 - a. **The said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider will not directly or through any other person or firm, offer, promises or give to any of the principal's employee involved in the tender process or during the execution of the contract or to any third person any materials or other benefit which he/she is not legally entitled to in order to obtain any advantage in exchange of any kind whatsoever during the tender process or during the execution of the contract.**
 - b. **The Bidder Contractor/ Supplier/ Purchaser/ Service Provider will not collude and enter into any undisclosed agreement or understanding whether formal or informal with any other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider to impair transparency and fairness. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bid any other action to restrict competitiveness or to introduce cartelization in the bidding process.**
 - c. The **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** will not commit any offence under the said relevant IPC/PC Act; further it will not use improperly, for the purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** will, when presenting its bid, disclose any and all payments it has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
2. The **Bidder / Contractor / Supplier/ Purchaser / Service Provider** will not instigate third party or persons to commit offences outlined above or be an abettor to such offences.

Section 3: Disqualification from Tender process and exclusion from future contracts.

- a. If the **Bidder/ Contractor/ Supplier/Purchaser/Service Provider** before awarding contract has committed a transgression through a violation of Section 2 or in any other form such as to put its/their reliability or credibility as **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** into question, the Principal is entitled to disqualify **the Bidder/ Contractor/ Supplier/ Purchaser/Service Provider** from the Tender process or to terminate the contract if already signed for such reason.
- b. If the **Bidder / Contractor / Supplier / Purchaser / Service Provider** has committed a transgression through a violation of Section 2 such as to put its/their reliability or credibility into question, the Principal is also entitled to exclude the

said **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** from future contract awarding process. The imposition and duration of the exclusion will be determined by the severity of such transgression. The severity will be determined by the circumstances of the cause in particular, the number of transgressions, the position of transgression within the company's hierarchy and the amount of damage. The exclusion will be imposed for a minimum period of 6 months and maximum of three years.

- c. The Bidder/Contractor/Supplier/Purchaser/Service Provider accept and undertake to respect and uphold the principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- d. If the Bidder/Contractor/Supplier/Purchaser/Service Provider can prove that it/they have restored/recouped the damages caused by him/them and has installed a suitable corruption prevention system, the Principal may revoke the exclusion pre-maturely subject to discretion.

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder/Contractor/ Supplier/Purchaser/Service Provider from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposited/Bid Security or 3% of the value of the offer whichever is higher.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider liquidated damages equivalent to 5% of the Contract value or the amount equivalent Performance Bank Guarantee.
3. **The Bidder / Contractor / Supplier / Purchaser / Service Provider agrees and undertakes to pay the said amount without protest or demur subject only to condition that if the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider can prove and establish that the exclusion of them from the tender process or termination of the contract after the contract awarded to them has caused no damage or less damage than the amount of the liquidated damages, the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider shall compensate the principal only to the extent of the damages in the amount proved.**

Section 5: Previous Transgression

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider declares that no previous transgressions occurred the last three years with any other company in any country conforming to anti-corruption approach or with any other public sector enterprise in India that could justify its exclusion from the tender process.

2. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider make incorrect statement on this subject, it can be disqualified from the tender process or the contract, if already awarded can be terminated.

Section 6: Equal treatment of all Bidder/ Contractor/ Suppliers/ Purchasers/ Service Providers.

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider undertakes to demand from all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will have the liberty to enter into agreements with identical conditions as this one with all other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider.
3. The Principal will disqualify from the tender process any or all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider who do not sign this Pact or violate its provisions.

Section 7: Criminal charges against violating Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider

If the Principal obtains knowledge of conduct of Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, or of an employee or a representative or an associate of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer/Vigilance Department of the Principal.

Section 8: Independent External Monitor/ Monitors

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally, independently and impartially. He would report to the Chairman, AYCL.
3. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, if any, with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relationship between the Principal and the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The parties can offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes that a violation of this agreement has committed, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation or take corrective action, or to take other relevant action. The monitor can in this regard

submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

6. The monitor will submit a written report to the Chairman, AYCL, within 6 weeks from the date of reference or intimation to him by the principal and, should the occasion arise, submit proposals for correcting such problematic situations.
7. If the Monitor has reported to the Chairman, AYCL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman AYCL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer/Vigilance Department, the Monitor may also transmit this information directly to the Chief Vigilance Commissioner, Government of India.

Section 9 - Pact Duration

This pact begins when both parties have legally signed it. It expires 12 months after the last payment made under the contract, and for all other sub-contractors 6 months after the date of contract has been awarded.

Section 10 – Other Provisions

1. This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Kolkata.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case the parties will strive to come to an agreement to their original intentions.

(For & on behalf of the Principal)

(Office Seal)

Place.....

Witness 1:.....
(Name & Address).....

(For & On behalf of
Bidder/Contractor/
Supplier/Service Provider)

(Office Seal)

Date.....

Witness 2:.....
(Name & Address).....

Annexure 2: Empanelment Format

NAME OF THE UNIT

Application for Empanelment Form

The applicants are required to furnish full information to the queries included in this form. In giving the particulars, the supporting documents/ certificates, as called for per queries at places, must be tagged with the application for evidencing the information furnished in the application for empanelment.

This application form should be submitted along with the registration fee of INR ... (Rupees) by crossed Postal Order/ Bank Draft in favour of Andrew Yule & Company Ltd.

- 1) Date of Advertisement for Registration :
- 2) Name of the Firm in Full:
- 3) Address of the Firm :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop/ Godown
 - e) Depot
- 4) Telephone/Telegram/Fax No./E-mail :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop
 - e) Depot
- 5) Status of the Organisation :
- 6) Whether Manufacturer/Contractor/ : Fabricator/ Sub-contractor/
Stockist/ Agent/Dealer
- 7) Item for which empanelment is sought :
- 8) Banker's Name :
 - a) Name of the Branch
 - b) Address of the Branch
 - c) Account Number

Note : Confidential Report of financial position will be requested for by AY & Co. Ltd. from the Bankers.

- 9) Trade Licence No. : (Please attach a Xerox copy)
- 10) Factory Licence No. : (Please attach a Xerox copy)
- 11) Whether registered as an SSI Unit. : If yes, Registration No.
(Please attach a Xerox copy)
- 12) Sales Tax Registration No. :
 - a) Central
 - b) State
(Please attach a Xerox copy of Registration Certificate)
- 13) I.T. Permanent Account No.
- 14) Photo copies of current I.T. & Tax : clearance Certificates are to be attached
- 15) Whether the applicant is already empaneled: in this enterprise. If so, the details are to be furnished stating the types of jobs executed, etc. i.e.

- (a) Description of the job (b) Year
- (c) Amount & (d) Authorised by
- 16) Whether the applicant is empaneled with any : other Public Sector Undertaking/ other reputed manufacturers.

If so, the details are to be furnished

17) Financial Capacity (Year) :

- a) Fixed Capital
- b) Working Capital

(copies of Balance Sheet & Profit & Loss A/c for last 3 years should be attached)

18) Technical capacity :

- (i) Tools & Equipment list (to be attached)
- (ii) Manufacturing Capacity: (to be quantified)

19) Manpower on Rolls :

Total Manpower in Roll

- a) Skilled workers
- b) Unskilled workers
- c) Others
- d) Supervisors
- e) Engineers

20) Name & Residential address of : Partners/ Directors/ Proprietors,
as the case may be

21) Whether any Govt. Servant(s) or : dismissed Employee(s) of Andrew Yule
& Co. Ltd./ any other Govt. Undertaking is in employment under the applicant

22) Whether the applicant or any of its Partners/ Directors has been banned or removed from the
approved list

of suppliers by the Enterprise or Undertaking / any other Enterprise or Undertaking in the past

I/ We hereby certify that the particulars furnished by me/ us above are true to the best of my/ our knowledge and belief and misrepresentations of facts will render me/ us liable to any action as may be deemed fit by Andrew Yule & Co. Ltd. Unit/ Division have the sole discretion to reject or accept my / our candidature for empanelment.

Place : (Signature of the Applicant) Office Stamp/Seal

Date :

Annexure 3: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means:
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or e. An Indian (or other) agent of such an entity; or
 - e. A natural person who is a citizen of such a country; or
 - f. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The beneficial owner for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation –

 - a. "Controlling ownership interest" means ownership of or entitlement to more than 25% of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than 15% of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any

other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)
- "I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."*

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure 4: Purchase Requisition (Indent) for Goods

Name of the Unit/division
Factory/Tea Garden

PURCHASE REQUISITION
FORM NO: -

Print Date: - XX/XX/XXXX

- Purchase Copy
- Planning Copy

S.O. NO	Date
Ref No	Section Planning

PR No.	Date
JOB NO.	BOM NO.

Remarks:

- Hold Passed

Sl.	Item Code	Cat	SSR/SAC Code	Description/Drawing No Remarks	<--Proc.--> Qty UOM	<-Factory--> Qty UOM	Delivery Within <---Schedule--->	REMARKS

REMARKS: F = Procurement S = Sub-Contract
I = Existing Item Rate; R = Rate Contract; E = Enquiry; M = Own Make Item (Proc. Not Reqd.)

NOTE:-
1 Test Certificates & inspection reports to be produced.
2 Code No. / Fan Size must be marked by paints on Finished materials.

Indentor
/

Authorised Signatory /
Unit Head

Annexure 5: Limited Tender Form (for outside GeM)

Name of the Procuring Entity: _____

Firm's Reference				Date					
Firm Registration No. (if any)				PAN(attach photocopy)					
TIN/VAT/CST				Address:					
Phone				LIMITED TENDER					
Fax				FORM					
Email									
M/s:				Enquiry No. and Date					
				Date of Tender					
				<i>The tender would be opened at three pm on the date of tender opening above, at the address mentioned above.</i>					
Please submit on or before 3:00 pm on the date of tender opening, your quotation for the following goods, in accordance with the terms and conditions printed overleaf, in a sealed cover, marked on top									
Yours Sincerely									
Procuring Officer									
Tender Schedule: All Rates in Figures and in Words in Rupees									
Sr No:	Description and Specification	Qty	Unit	Delivery Terms	Rate per Unit	Taxes & Duties	Packing/ forwarding	Total Rate per	Total Value
Delivery Schedule:									
Enclosed Specifications/Drawings/Special Conditions of Contract:									
Item/Tender Specific Conditions of this Tender:									
I/ we engage to supply the material(s) to your office and comply the following:									
1. Tender schedule and technical specification indicated.									
2. Item/tender specific conditions for this tender.									
3. Terms and conditions printed overleaf.									
4. General conditions of contract signed by me at the time of supplier registration (for registered suppliers).									
5. I/we confirm that set off for the ED, VAT, etc. Paid on the inputs have been taken into consideration in the above quoted price and further agree to pass on such additional duties as sets offs as may become available in future under VAT, etc.									
6. This offer is valid for 90 (ninety) days from the date of opening of the tender.									
7. That we have not been debarred by any Government/Undertaking.									
8. That the rates quoted are not higher than the rates quoted for same item to any Government/Undertaking.									
9. That the bid submitted by us is properly sealed and prepared so as to prevent any subsequent alteration and replacement.									

Signature & Seal		Name of Authorised	
Place & Date:		Signatory:	
Address:		Tel. No./ Fax. No./ Mobile	
		No.	
		Email Id:	

TERMS AND CONDITIONS OF LIMITED TENDER

- i. The quotation must be in the form furnished by unit/division and should be free from corrections/erasures. In case there is any unavoidable correction it should be properly attested. If not the quotation will not be considered. Quotation written in pencil will not be considered.
- ii. Quotation will be opened on due date at 3.00 pm at the indicated venue in presence of the tenderers or their representatives who may wish to be present.
- iii. The Company reserves the right to accept the offer by individual items and reject any or all tenders without assigning any reason thereof and does not bind itself to accept lowest quotations.
- iv. Participation in this tender is by invitation only and is limited to the selected Company's enlisted vendors. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may bring it to the notice of unit/division and apply for registration as per procedure. Note: to get registered as an approved supplier with the Company, please download supplier approval form from AYCL website and submit.
- v. Manufacturer's name and country of origin of materials offered must be clearly specified. Please quote whether your organisation is large scale industry or small scale industry. If you have NSIC/ MSE/ MSI Certificate, please attach it to the quotation. Mention your registration details.
- vi. Complete details and ISI specification if any must accompany the quotation. Make/ brand of the item shall be stated wherever applicable. If you have got any counter offer as suitable to the material required by us, the same may be shown separately.
- vii. Samples must be submitted where specified along with the quotations. Samples must be carefully packed, sealed and labelled clearly with enquiry number, subject and sender's name for easy identification. Rejected samples will be returned at your cost if insisted.
- viii. All drawings sketches, technical specifications and samples, if any, sent along with this enquiry must be returned along with quotations duly signed.
- ix. All supplies are subject to inspection and approval before acceptance. Manufacturer/supplier warranty certificates and manufacturer/ Government approved lab test certificate shall be furnished along with the supply, wherever applicable.
- x. The Company reserves the right to modify the quantity specified in this enquiry.
- xi. The prices quoted should be firm till the supplies are completed. Please quote the rates in words and figures. Rates quoted should be free delivery at destination including all charges otherwise the quotation is likely to be rejected. Prices quoted for free delivery at destination will be given preference. If there is no indication regarding the FOR, in the quotation, then it will be considered as FOR destinations. Price quoted should be net and valid for a minimum period of three months from the date of opening of the quotation.
- xii. Payment of sales tax is primarily the responsibility of the seller and will not be paid unless the percentage value is clearly mentioned in the quotations. If no indication regarding CST/ST is recorded in the quotation, the CST/ST will be considered as included.

- xiii. Delivery period required for supplying the material should be invariably specified in the quotation.
- xiv. In case your quotation is accepted and order is placed on you, the supply against the order should be made within the period stipulated in the order. The Company reserves the right to recover any loss sustained due to delayed delivery by way of penalty. Failure to supply the material within the stipulated period shall entitle AYCL for the imposition of penalty without assigning any reasons @ ½% of the total value of the item covered in order as penalty per week subject to a maximum of 5% unless extension is obtained in writing from the office on valid ground before expiry of delivery period.
- xv. If the deliveries are not maintained and due to that account AYCL is forced to buy the material at your risk and cost from elsewhere, the loss or damage that may be sustained there by will be recovered from the defaulting supplier.
- xvi. Dispute clause: Any dispute relating to the enquiry shall be subject to the jurisdiction of the court at [indicate Place] only.
- xvii. Warranty Period: AA months for the date of supply of material or BB months from the date of commissioning, whichever is earlier.
- xviii. **Payment Terms:** XX% along with taxes & duties within YY days on receipt and acceptance of material at our factory/garden/site in good condition. Balance ZZ% will be paid on submission of equivalent of PBG valid for warranty period

Annexure 6: Proprietary Article Certificate

Valid for the Current Financial Year

Name of Unit/division: _____

File Number and Date Reference _____

1	Description of article	
2	Forecast of quantity/annual requirement	
3	Approximate estimated value for above quantity	
4	Maker's name and address	
5	Name(s) of authorised dealers/ stockists	
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid	
6(a)	This is the only firm who is manufacturing/stocking this item. AND	
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR	
6(c-1)	No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares): OR	
6 (c)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources): OR	
7	Reference of concurrence of finance wing to the proposal	

History of PAC purchases of this item for past three years may be given below

Name of the Supplier	Quantity Ordered	Basic Rate on Order (INR)	Adverse Performance Reported if Any
Order/ Tender Reference & Date			

Signature of Approving Authority _____

Date _____

Designation of Officer _____

Annexure 7: Purchase without Quotation Format

Name of Unit/division: _____

Ref No: _____

Place: _____ Date: _____

I, _____, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/ contractor at a reasonable price.

Item:	
Quantity:	
Indenter:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/S	
Vide Bill No.:	
Justification:	
Cheque may be drawn in favour of	
Name:	
Designation:	
Signature:	

Annexure 8: Purchase Committee Certificate Format

Name of Unit/division: _____

Ref No: _____

Place: _____ **Date:** _____

“Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier/contractor recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/Department concerned.” The details of recommended purchase are

Items:						
Quantity:						
Intender:						
Details of Prices Ascertained						
Bidder	Unit Rate:	Taxes/Duties:	Other Charges:	Total Unit	Total Price:	Recommendations & Comments
Bidder						
Unit Rate, Taxes/Duties/Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:		Signature:			Signature:	
Name 1:		Name 2:			Name 3:	
Designation:		Designation:			Designation:	

Annexure 9: Sample Prequalification Criteria

Criteria 1 - Experience and Past Performance:

- i. The bidder (*manufacturer or principal of authorised representative – hereinafter referred simply as 'The Bidder'*) should have regularly for at least the last [three] years, ending 31st March (or any other year ending followed in relevant country) of the previous financial year (*hereinafter called 'The relevant Date'*), manufactured and **supplied (/ erected/ commissioned) [Name of Requirement]**, with the same or higher specifications [*having/with – parameters*](*hereinafter called 'The Product'*), and
- ii. The bidder' should have manufactured and **supplied (/ erected/ commissioned)** at least XX numbers (*herein after referred as 'The Qualifying Quantity'*) of 'The Product' in at least one of the last five years ending on 'The relevant Date', and out of which
- iii. (*At least 01 numbers of offered version/ model of 'The product' should be in successful operation for at least 02 years on the date of bid opening.*)

Criteria 2 - Capability- Equipment & manufacturing Facilities

The bidder' must have an annual capacity to manufacture and *supply (/ erected/ commissioned)* at least 'The Qualifying Quantity'.

Note: In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in case of Printing Paper of different specifications/ sizes, it shall be applicable to quantity of paper manufactured and supplied specification/ size wise.

Criteria 3 - Financial Standing – under all conditions

- a. The average annual financial turnover of 'The bidder' during the last three years, ending on 'The relevant Date', should be at **INR [-----] Lacs** (or equivalent in foreign currency at exchange rate prevalent on 'The Relevant Date') as per the annual report (audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant/ Cost Accountant in India or equivalent in relevant countries.
- b. The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on 'The Relevant Date' and also ii) should have not eroded by more than **30%** in the last three years, ending on 'The Relevant Date'.

Applicability in Special Cases:

- b. Applicability to 'Make in India': Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing 'Make in India' agreement/ program and who while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:
 1. their foreign 'Make-in-India' associates meet all the criteria above without exemption, and
 2. the Bidder submits appropriate documentary proof for a valid/ approved ongoing 'Make in India' agreement/ program.
 3. the bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of

'The Product' offered including all warranty obligations as per the general and special conditions of contract.

- c. Authorized Representatives: Bids of bidders quoting as authorised representative of a principal manufacturer would also be considered to be qualified, provided:
 - 1. their principal manufacturer meets all the criteria above without exemption, and
 - 2. the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of contract; and
 - 3. the bidder himself should have been associated, as authorised representative of the same or other Principal Manufacturer for same set of services as in present bid (supply, installation, satisfactorily commissioning, after sales service as the case may be) for same or similar 'Product' for past three years ending on 'The Relevant Date'.

- d. For Existing Successful Past Suppliers: In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of 'The Product' in at least one of the recent past 03 procurements, who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the maximum quantity supplied by him in such recent past.

- e. Joint Ventures and Holding Companies: Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria independently. However, for the purpose of qualifying the Financial Standing Criteria, the Financial Standing credentials of a Holding Company can be clubbed with only one of the fully owned subsidiary bidding company, with appropriate legal documents proving such ownership.

NOTE FOR BIDDERS:

- a. ***Doctrine of Substantial Compliance'***: The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by the Company would be based on common usage of terminologies and phrases in public procurement in accordance with the 'Doctrine of Substantial Compliance' and would be final.

- b. Along with all the necessary documents/certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.

- c. Supporting documents submitted by the bidder must be certified as follows:
 - 1. All copy of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and

capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.

2. All financial standing data should be certified by certified accountants, for example, Chartered Accountants/ Cost Accountants or equivalent in relevant countries; and Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.

Note for Purchaser

Portions in italics are for your decision/ guidance; these are not to be printed in the bid documents. Portion within [] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the bid documents

Annexure 10: Bid Opening Attendance Sheet cum Report (Outside GeM)

Name of the Unit/Division
Bid Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidders's Authorization & Date	Represented by	Contact No	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No	Bidder's Name	Bidder's Ref & Date	Submission of Requisite EMD (Y/N)	Submission of Mandatory Documents (Y/N)	Rate Quoted & Taxes/ Duites	Signature of Representative

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time	Signature, Date and Time
Name and Designation of Tender Opening Officer	Name and Designation of Tender Opening Officer

Annexure 11: Tender Committee Minutes Format

(For Techno-Commercial/Financial Bids)

Unit/Division: _____ Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Section I: Top Sheet					
File No:				Date:	
Description				Estimated Cost:-	
Tender Published In				Date of Publication	
Bid Validity				Bid Opening Date	
Past Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (INR)	Remarks
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Salient Feature of the Tender					
Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project					
Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Section III: Preliminary Evaluation					
Review handling of any complaints received					
Review/confirmation of quantity and period of delivery required					
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications					

Section IV: Evaluation of Responsive Bids

Bid-wise deliberation should be recorded

In case of evaluation of Financial Bids

- i. Start with review of techno-commercial evaluation
- ii. Insert a summary table of evaluated price in the order of L1, L2, etc.
- iii. Deliberations should be in the sequence of L1, L2, etc.

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- a. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
- b. Also mention that the rates recommended are considered reasonable (and basis for such determination).
- c. Total value of the recommendations for determining level of acceptance authority.
- d. Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- e. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per DOP.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority:

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____

Annexure 12: Invitation and Declaration for Negotiations (Outside GeM)
Invitation for Negotiations
(On letterhead of the unit/division)

Ref No:

Dated

To M/s

Subject: Tender No ----- opened on -----for the supply of -----

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Authorized Signatory

Enclosure:

- i) Form of Declaration
- ii) Form of Revised Offer

Annexure 13: Format of Revised Offer in Negotiations (Outside GeM)

Revised Offer in Negotiations
(On company letterhead)

From.....
Full address.....
To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: _____ dated: _____

1. On further discussions with your representatives onin response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.
3. I/we undertake to execute the contract as per following Schedule.....
4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or officer
authorised to sign the bid
documents on behalf of the
bidder

Annexure 14: Incoterms

TERM SERVICE	EXW Ex-Works	FCA Free Carrier	FAS Free Alongside	FOB FOB Vessel	CFR Cost & Freight	CIF Cost Insurance & Freight	CPT Carriage Paid to
	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Warehouse storage at point of origin	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Warehouse labour at point of origin	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading at point of origin	Buyer	Seller	Seller	Seller	Seller	Seller	Seller
Inland freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Port receiving charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Forwarders fee	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Loading on ocean carrier	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller
Ocean/air freight charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Insurance charges for transit risk of the buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Charges at foreign port/airport	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
Customs, duties & taxes abroad	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Delivery charges to final destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Annexure 15: Proposal for Extension of Delivery Period

Proposal for Extension of Delivery Period

Department		Office	
Description		Contract value	
Contract No:		Date:	
Variations applicable	PVC/ ERV/ Statutory Variations	Type of contractor	Govt. Dept. / PSU/ MSE/Pvt
Contractor & Regn. No.:		Quantity on order	
Quantity already supplied		Quantity remaining	
Details of earlier extensions granted		Is it a contract:	Development/ Indigenisation
Reference and date of request for extension		Reasons cited for extension	
Original/extended delivery period/ date		Proposed extension of period/ date	
Signature of Procuring Officer		Date	

Remarks of Indenter:

Regarding the proposed extension of delivery period/date, the following remarks are given regarding loss and inconvenience due to delay:

Loss: (strike out options not applicable): No loss would be incurred/ loss is incurred but cannot be quantified/ loss to the extent of INR. ----- would be incurred Inconvenience: (strike out what is not applicable): No inconvenience would be incurred/inconvenience would be incurred Proposed extension in delivery is recommended with above remarks.

Signature of Indenting/Procurement Officer and Date

Proposal by Unit/Division

It is certified that:

- a. That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery;
- b. That there is no falling trend in prices for this item as evidenced from the fact that in the intervening period neither orders have been placed at rates lower than this contract nor any tender has been opened where such rates have been received even though tender is not yet decided.

It is proposed to grant extension of delivery period/date up to _____ (strike out options not applicable) with recovery of LD/with recovery of token LD/without any LD and with/without denial clause, in view of justifications recorded below:

_____ In view of value of the contract and proposal regarding liquidated damages, this would require approval of _____ (competent authority). This would/ would not require financial concurrence.

Recommendation /Signature of Tender Committee Members

Approval/Signature of the approving/Competent Authority as per DOP

Annexure 16: Format for Extension of Delivery Period/Performance Notice

Letter Head of Unit/division or through Company's e-mail id

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ----- dated -----for the supply of -----

Ref: Your letter no. ----- dated: -----

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date).
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
 - a. That no increases in price on account of any statutory increase in or fresh Imposition of customs duty, excise duty, Sales Tax, CST, VAT or on account of any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and.
 - b. That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.
 - c. But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of customs duty, excise duty, Sales Tax, VAT/CST or on account of any other Tax or duty or on any other ground as stipulated in the price variation

clause or foreign exchange rate variation which takes place after the expiry of the above mentioned date namely (insert the original delivery date)

- d. All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
- e. Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,
(Authorised Officer)
Duly authorised, for and on behalf of
Andrew Yule & Co. Ltd.

Note: Select one option within { } brackets; delete portion within [] brackets, if not applicable; fill in () brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice:

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.

Annexure 17: Model Format for Correspondence with Supplier after Expiry of Delivery Date

To
M/s

"Sub: Contract No..... dated for supply of
.....

Dear Sirs,

The date of delivery of the subject contract expired on_____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity supplied so far and, also, the quantity inspected so far, but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(-----)

for.....

Annexure 18: Goods Receipt Notes (GRN) Format

- Vendor's Copy
- Account's Copy
- File Copy

STORES RECEIPT

NO. :
Date:

IGST /ED No.	Date	Amount	Log No.	Log Date	<-----Supplier Name & Address----->							
					GSTN NO. :							
SGST / VATNo.	Date	Amount	Chln No.	Chln Date								
CGST No.	Date	Amount	P.O.No.	P.O.Date								
Crd Days :			Rejec. No.:		State Code:							
Location :				Indent No.:		Advance : (If Any)						
SL	Material Code Description	HSN Code	UCM	Ref. Job No. Location	Chalan Qty.	Accept Qty.	Factory Quantity	<-----%----->			SR RATE (Rs.)	VALUE (Rs.)
								SGST	CGST	IGST		
0												
In Words :											Total:	

Prepared By

Inspected By

Stores Department

Passed For Payment

Annexure 19: Capital Expenditure Authorisation Form (CEA Form)

NAME OF THE UNIT

Capital Expenditure Authorisation Form

		Items	Quantity
1.	Detail Description	:	
2.	Detail Specification & make	:	
3.	Reference of Proposal (Budget Sanction No.)	:	
4.	Works Request No.	:	
	Date :		
5.	Sources of Funds :		
	Plan Fund sanctioned letter Ref. :	Non	
	Plan Fund sanctioned letter Ref :	Own	
	generation/ other sources	:	
	(to be specified specially)		
6.	Estimated cost (detail as per Annexure-IIA) :		
7.	Justification (as per Annexure-II B)	:	
8.	Schedule of Implementation	:	
		Expected Date	Expected Cash Flow required
a)	Finalisation of order	:	
b)	Placement of the order	:	
c)	Installation/completion	:	
d)	Asset to be put into use	:	
e)	Warranty Period	:	
9.	H.O. Sanction No.	:	
	Date	:	
10.	Sanctioned Amount	:	
	(To be filled in at H.O. after approval by competent authority)		

Estimated by	Checked by	Forwarded by	Financial Concurrence by	Recommended by	Sanctioned by
-----------------	---------------	-----------------	-----------------------------	-------------------	------------------

Signature :

Date :

Designation : _____ 42 _____

Annexure 20: Scrap Policy

SCRAP POLICY

(As approved by the Board of Directors on 14.02.2023)

(Effective date of implementation: 01.04.2023)

I. Preamble

Andrew Yule & Co. Ltd. (AYCL), a CPSE under the administrative control of the Ministry of Heavy Industries (MHI), Govt. of India, has three operating Divisions viz. Tea, Engineering and Electrical – Chennai Operations along with its corporate office at Yule House, Kolkata. Manufacturing activities carried out by AYCL with own raw materials, semi-finished items, consumables, spares, etc. from inventory and use of own Equipment /Plant & Machinery in factories at different locations, result in generation of unusable items due to inherent nature of operation and maintenance, loss of shelf-life, obsolescence etc., which needs to be disposed off in a prudent and transparent manner for avoiding blockage of working capital and also for optimum space utilization.

II. Categorisation

The unusable Holdings can be categorized as under:

1. Scraps/wastes arising from left over items of raw materials.
2. Residual materials after expiry of life/main uses.
3. Obsolete/non-moving stores item.
4. Finished goods and work-in-progress items which have failed or damaged and beyond repair.
5. Equipment/Plant & Machinery items including spare parts rendered unserviceable during operation or accidents or severely damaged in transit.
6. Surplus or unusable packing/packing materials are generated as 'empties' like containers, plates, bottles, plastic jars, drums, wooden/plastic Bobins.
7. Hazardous/e-waste scraps with properties that make them dangerous or potentially harmful to human health or the environment.
8. Any other form/ways.

III. Procedure for identification of Unserviceable Equipment/Plant & Machinery, Spares and Stores as well as Surplus Equipment, Spare Parts and Stores

In respect of the following categories of unusable items:

- A) Process Scrap, failed components of Plant & Machinery, packaging wastes.
- B) Hazardous wastes, paint containers, etc.
- C) Electronic gadgets viz laptop, desktop, computer accessories in asset register, declared by AYCL as non-usable/irreparable and to be classified as e-waste.
- D) Old unusable equipment/machinery, unusable and non-moving stores, inventories due to obsolescence, deterioration in quality etc.

For item nos. A to C - should be identified and declared by a scrap committee duly approved by the competent authority which will include technical personnel, a finance personnel and one from administration/ personnel department. The identification and declaration of the above committee will be duly approved by the Unit/ Divisional Head.

For item no. D - after due recommendation from the Unit/Divisional Head, approval should be obtained from the competent Authority.

IV. Methodology for Fixation of Reserve Price/Floor Price

The proposal for reserve value should be carefully computed by the scrap committee taking into consideration of relevant information viz.

- 1) The Written Down Value wherever applicable,
- 2) The latest Value of such Items in MSTC monthly catalogue or last sale price realised through auction conducted through MSTC,
- 3) Market value of such similar items,
- 4) Valuation Report of a Registered Valuer (Chartered Engineer),
- 5) Any other ways/form.

The proposal for fixing up the reserve value so computed by the committee shall be approved by competent authority as per the Delegation of power.

V. Methodology for Sale/Disposal

- a) To ensure fair, transparent and efficient system for disposal of the scrap materials, e-auction mode shall be followed through MSTC or any other suitable e-auction service provider as approved by the competent authority.
- b)
 - i) The start price for first auction to be conducted should be approved reserve prices with 10%, subject to approval (2 attempts).
 - ii) Items remaining unsold at first auction should be put up for e-auction for the second time with start price at approved reserve price with 20%, subject to approval (2 attempts).
 - iii) In case some items remain unsold after two auctions, it shall be put up for third auction time with start price at approved reserve price with 30%, subject to approval (2 attempts).
 - iv) Despite abovementioned six attempts of e-auction, if the item could not be sold, then outcome of the e-auctions conducted so far shall be reverted to the concerned unit/department for re-assessment of the reserve value considering the results of the six e-auctions conducted. A revaluation through a registered valuer may be done thereafter to understand the market value vis-à-vis highest bid price received in the last six auctions, if any.
 - v) After re-assessment of the reserve price, the process as stated in Para 1 to 3 should be again followed for another six rounds of e-auction.
In case the lot remains unsold even after another six auctions, after re- assessment of reserve value, it may be put up to the Board for further guidance.
- c) In cases where bids received is more than the reserve price, the items will be considered as sold. However, in cases where the H1 price is within the STA % of the reserve price then after receiving the bid sheets from the service provider concerned person will verify the H1 bids with the reserve value/threshold value and get it vetted by their Finance and Accounts for acceptance of the H1 price as per the procedure laid down above and will obtain the approval of competent authority before giving the clearance to the service provider to convey the acceptance of H1 rate to the successful bidders.

The service provider will then inform the successful H1 bidders about the acceptance of their bid and advise them on their registered email address and through SMS alert to deposit the requisite security deposit and balance material value as per the terms of the auction.

-X-X-X-

Annexure 21: Survey Committee's Report

Name of Unit/Division: _____

SURVEY COMMITTEES REPORT

Report Reference No:											Date:		
Sr No.	Code No.	Description of Stores	Quantity		Book Value			Total Est Scrap Value	Total Est Loss	User Dept.	Reason of Survey	Recommendation of Survey Committee	Remarks by the Competent Authority
			No.	Wt.	Rate	Unit	Amount	9	10				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
(Signature)					(Signature)					(Signature)			
Committee Member Designation					Committee Member Designation					Committee Member Designation			
Date and Place:													
Signature													
Competent Authority													

Annexure 22: Sale Account for Goods Disposed

Name of the Unit/Division _____

Sale Account for Goods Disposed

Lot No	Particulars of Stores	Quantity/ Weight	Name and Full Address of Purchaser	Highest Bid Accepted (Name of bidder & bid value)	Amount and Date Earned Money/ Security Deposit Realised	Amount & Date on which the Complete Amount is Realised and Credited with Cashier and Reference thereof	The Actual Date of Handing over of the Articles with Quantities with reference of Issue Notes and Gate pass	Signatures of the Purchaser	eAuction Service Provider's Commission and Acknowledgement for its Payment	Book Value	Profit/ Loss w.r.t Book Value
(Signature)			(Signature)				(Signature)				
Auction Disposal Officer			Accounts Representative				Authorized Representative				

PROCEDURE/ MANUAL FOR PROCUREMENT OF WORKS
(TO BE EFFECTIVE FROM MAY 9, 2024)

PREFACE

1. The present Purchase Procedure of Andrew Yule & Co Ltd. (AYCL) uniformly followed by all the Divisions and Units was approved by the Board of Directors of AYCL in its 249th meeting held on March 30, 2022 and was made effective from April 01, 2022.
2. The Manual on Procurement of Works has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner.
3. Any new guidelines/regulations/directives that may be issued in future by Govt. of India also shall be complied with. For such new/revision/amendments of guidelines, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance may be referred.
4. Manuals issued by AYCL are to be taken as generic guidelines, which must be necessarily broad. Units/Divisions are advised to supplement this manual to suit their local/specialized needs, by taking necessary approval in accordance with the Delegation of Power of AYCL.

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Abbreviations and Acronyms

AAEC	Appreciable Adverse Effect on Competition	DOP	Delegation of Power
AITB	Appendix to Instructions to Bidders (ITB, also named as BDS)	DPR	Detailed Project Report
AYCL	Andrew Yule & Co Ltd	DSC	Digital Signature Certificate
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate	DSPE	Delhi Special Police Establishment Act, 1946
BDS	Bid Data Sheet	EC	Evaluated Cost
BG	Bank Guarantee	ECS	Electronic Clearing System
BIS	Bureau of Indian Standards	EIA	Environmental impact assessment
BOC	Bid Opening Committee	EMD	Earnest Money Deposit
BOQ	Bill of Quantities	EOI	Expression of Interest (Tender)
BRO	Border Roads Organisation	EPC	Engineering, Procurement and Construction
C&AG	Comptroller and Auditor General (of India)	EPF	Employee Provident Fund
CA	Competent Authority	ESI	Employee State Insurance
CBI	Central Bureau of Investigation	FA	Financial Advisor
CCI	Competition Commission of India	FBS	Fixed Budget System
CEC	Consultancy Evaluation Committee	FEMA	Foreign Exchange Management Act
CIPP	Code of Integrity for Public Procurement	FM	Force Majeure
CMC	Contract Management Committee	FTP	Full Technical Proposal
CPO	Central Purchasing Organizations	GCC	General Conditions of Contract
CPPP	Central Public Procurement Portal	GePNIC	Government e-Procurement (System) of National Informatics Centre
CPSE	Central Public Sector Enterprise, see PSU also	GFR	General and Financial Rules, 2017
CPWD	Central Public Works Department	GOI	Government of India
CV	Curriculum Vitae	GTE	Global Tender Enquiry
CVC	Central Vigilance Commission	HOD	Head of the Department
CVO	Chief Vigilance Officer	HUF	Hindu Undivided Family
DFPR	Delegation of Financial Power (same as DOP)	ICT	Information & Communications Technology
DG	Director General	IEM	Independent External Monitor
DGS&D	Directorate General of Supplies and Disposals	IP	Integrity Pact
DLC	Defect Liability Certificate	ISO	International Organization for Standardization
DLP	Defect Liability Period	IT	Information Technology
DoE	Department of Expenditure	ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)

ITC	Instructions to Consultants
ITJ	Indian Trade Journal
JV	Joint Venture (Consortium)
L1	Lowest Bidder
L2	Second Lowest Bidder
L3	Third Lowest Bidder
LCC	Life Cycle Cost
LCS	Least Cost System
LD	Liquidated Damages
LEC	Lowest Evaluated Cost
LOA	Letter of Acceptance
LOI	Letter of Invitation
LTE	Limited Tender Enquiry
MB	Measurement Book
MES	Military Engineering Service
MoF	Ministry of Finance
MOU	Memorandum of Understanding (of JV)
MoUD	Ministry of Urban Development
MSTC	Metal Scrap Trading Corporation
NGO	Non-Government Organisation
NIC	National Informatics Centre
NIT	Notice Inviting Tender
OTE	Open Tender Enquiry
PAN	Personal Account Number
PBG	Performance Bank Guarantee
POL	Petroleum Oils and Lubricants
PPD	Procurement Policy Division
PPP	Public Private Partnership
PPP-MII	Public Procurement (Preference to Make in India), Order
PPR	Preliminary Project Report

PQB	Prequalification Bidding
PQC	Pre-qualification Criteria
PSARA	Private Security Agencies Regulation Act, 2005
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise
PWO	Public Works Organisations
QA	Quality Assurance
QCBS	Quality and Cost Based Selection
(S)RFP	(Standard) Request for Proposals (Document)
RFQ	Request for Qualification
RTI	Right to Information (Act)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SD	Security Deposit
SLA	Service Level Agreement
SoPP	Schedule of Procurement Powers
SOR	Schedule of Rates
SSS/ STE	Single Source Selection/ Single Tender Enquiry
STP	Simplified Technical proposal
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC) or Tender Scrutiny Committee
TCO	Total Cost of Ownership
TOC	Taking Over Certificate
TOR	Terms of Reference
URDG	Uniform Rules for Demand Guarantees
VAT	Value Added Tax
VfM	(Best) Value for Money
WOL	Whole of Life (Cost) or Total Cost of Ownership TCO

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires:

- i. "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with Divisions/Units of AYCL;
- iii. "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the Divisions/Units of AYCL, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv. "Bidder enlistment document" means a document issued by AYCL, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- v. "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vi. "AYCL" or the "Company" means Andrew Yule & Co Ltd;
- vii. "Unit" or "Division" means the Divisions / Units of Andrew Yule & Co Ltd;
- viii. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- ix. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- x. "Competent authority" means the executive(s) who finally approves the decision as per Delegation of Power of the Company.
- xi. "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by Consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants, Advisory and project related Consultancy Services and include, for example: feasibility studies, project management, engineering services, Architectural Services, finance and accounting services, training and development. It may include small works or supply of goods or non-Consultancy services which are incidental or consequential to such services;
- xii. "e-Procurement" means the use of information and communication technology (specially the internet) by the units/Division of AYCL in conducting its procurement processes with bidders for

- the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii. "Enlisted Contractor" means any contractor who is on a list of empanelled contractors of AYCL;
 - xiv. "Enlisting authority" means an authority which enlists bidders for different categories of procurement;
 - xv. "Enlistment" means empanelment including the name of the contractor in the list of after verification of credentials.
 - xvi. "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, subassemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties (but excludes books, publications, periodicals, etc., for a library), procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
 - xvii. "Indenter" means the units/divisions of AYCL and its officials (executives/NUS) initiating a procurement indent, that is, a request to procure goods, works or services specified therein;
 - xviii. "Inventory" means any material, component or product that is held for use at a later time;
 - xix. "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Units/Divisions of AYCL inviting offers for pre-qualification from prospective bidders;
 - xx. "Invitation to register" means a document including any amendment thereto published by the Units/Divisions of AYCL inviting offers for bidder registration from prospective bidders;
 - xxi. "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
 - xxii. "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
 - xxiii. "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the units/divisions of AYCL, which informs the potential bidders that it intends to procure goods, services and/or works.;
 - xxiv. "Other Services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other Services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc;
 - xxv. "Outsourcing of Services" means deployment of outside agencies on a sustained long- term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services,

Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand- alone services.

- xxvi. "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxvii. "Pre-qualification document" means the document including any amendment thereto issued by units/divisions of AYCL, which sets out the terms and conditions of the prequalification bidding and includes the invitation to pre-qualify;
- xxviii. "Procurement" or "public procurement" (or 'Purchase' in certain contexts) means acquisition by way of purchase, lease, license of goods, works or services or any combination thereof, including award of Public Private Partnership projects, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term "procure" or "procured" shall be construed accordingly;
- xxix. "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or "Contract' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the AYCL or units/divisions of AYCL and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract' and "framework contract";
- xxx. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) AYCL's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxxi. "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxxii. "Procuring authority" means the executives/NUS who finally approves as well as those executives/NUS and tender committee members who submit the notes/reports for the approval for any decision.
- xxxiii. "Procuring entity" means any unit/division of AYCL to which powers of procurement have been delegated;
- xxxiv. "Project" means one-time, short-term expenditure resulting in creation of capital assets/as per the requirement of the business of the company, which could yield financial or economic returns or both. A project may comprise one or more related but independent task-oriented 'Works'. Projects may either be approved as individual projects within an approved scheme envelope or on a stand-alone basis. They may be executed through budgetary, extra-budgetary resources, or a combination of both.
- xxxv. "Prospective bidder" or "vendor" means anyone likely or desirous to be a bidder;
- xxxvi. "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for

the provision of public assets or public services or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

- xxxvii. "Registration" means simply registering the bidder/supplier/service provider/contractor, without any verification, say on a website etc.
- xxxviii. "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the unit/division of the company to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxix. "Service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by the unit/division of the company but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services';
- xl. "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xli. "Works" refer to any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term "Works" includes (i) civil works for the purposes of roads, bridges, buildings, irrigation systems, water supply, sewerage facilities, earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants.

1. Introduction to Procurement of Works

1.1. Procurement Rules and Regulations; and this Manual

- i. Unit/division of the company spends a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.
- ii. The Company have been delegated powers to make their own arrangements for procurement of works under the Delegation of Power, which have to be exercised in conformity with the 'Procurement Guidelines'.
- iii. To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of bidders/contractors, there are statutory provisions; rules; financial, vigilance, security, safety, counter-trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.
- iv. The Constitution also enshrines Fundamental Rights (In particular Article 14 – Right to Equality before law and Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872 and the Arbitration and Conciliation Act, 1996 (as amended in 2015) are major legislations governing contracts for procurement (both private and public) in general. There are in addition guidelines issued by Central Vigilance Commission (CVC) relating to Governance issues which are applicable to Public Procurement also. There is no law exclusively governing public procurement.
- v. However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, Delegation of Financial Powers Rules (DFPR); Public Procurement (Preference to Make in India), Order 2017 and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.
- vi. Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to be followed by all Executives/Non-Executives of Andrew Yule & Company Limited for procurement of works.

1.2. Preference to Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:

- a. 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b. 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20%.
- c. 'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
- d. 'Procuring entity' means unit/division of AYCL
- e. 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

- i. Eligibility of 'Class-I local supplier' / 'Class-II local supplier' / 'Non-local suppliers' for different types of procurement
 - a. In procurement of all goods, services or works in respect of which the unit/division has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
 - b. Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by unit/division, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than INR 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
 - c. For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.
- ii. Purchase Preference
 - a. Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by the unit/division in the manner specified here under.
 - b. In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 2. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.
 - c. In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within

- the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by the unit/division.
- d. **Applicability in tenders where contract is to be awarded to multiple bidders**
In tenders, where contract is awarded to multiple bidders, subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per the following procedure:
1. In case there is sufficient local capacity and competition for the item to be procured, as notified by the unit/division, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
 2. In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
 3. If 'Class I Local suppliers' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers' / 'Non local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
 4. First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.
 5. To avoid any ambiguity during bid evaluation process, the company may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.
- e. **Exemption of small purchases:** Notwithstanding anything contained in paragraph (c), procurements where the estimated value to be procured is less than INR 5 lakhs shall be exempt from the Order. However, it shall be ensured that procurement is not split for the purpose of avoiding the provisions of this Order.

- f. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Units/divisions may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/'Class-II local supplier'.
- g. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- h. **Government e-Marketplace (GeM):** In respect of procurement through the GeM shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- i. **Verification of local content:**
1. The 'Class-I local supplier'/'Class-II local supplier' at the time of tender bidding shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 2. In cases of procurement for a value in excess of INR 10 crores, the 'Class-I local supplier'/'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 3. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity. AYCL may constitute committees with internal/external experts for independent verification of self-declarations and auditor's/accountant's certificates on random basis and in the case of complaints. AYCL may prescribe fees for such complaints.
 4. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the GFR for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the GFR along with such other actions as may be permissible under law.
 5. A supplier who has been debarred by any unit/division for violation of the Order shall not be eligible for preference under the order for procurement by any other unit/division for the duration of the debarment.
 6. The debarment shall take effect prospectively from the date on which it comes to the notice in the manner prescribed below:
 - 1) The fact and duration of debarment for violation of order by any unit/division to be promptly brought the notice of all the units/divisions of AYCL.

- 2) A list of such cases along with name of the suppliers and the period of debarment shall be displayed on the AYCL website on a periodical basis.
- 3) In respect of units/divisions other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of receipt of notification/ uploading on website in such a manner that ongoing procurements are not disrupted.

j. Specifications in Tenders and other procurement solicitations:

- i. Units/divisions shall ensure that the eligibility conditions in respect of previous experience fixed in any tender do not require proof of supply in other countries or proof of exports.
- ii. Units/divisions shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier' / 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- iii. Units/divisions shall review all existing eligibility norms and conditions with reference to subparagraphs (j) (i) and (ii) above.
- iv. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. ~~If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.~~
- v. If the total procurement exceeds INR 1000 Crore per annum shall notify/update the procurement projections every year, for the next 5 years on AYCL's website.

k. Action for non-compliance of the Provisions of the Order: In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring personnel of procurement department under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

l. Manufacture under license/technology collaboration agreements with phased indigenization

- i. While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
- ii. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Unit/division, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender.

1.3. Applicability of this Manual

- i. **Works:** This manual is applicable to procurement of Works is defined as “any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. Supply of some materials or certain services may be incidental or consequential to and part of such works. The term “Works” includes (i) civil works for the purposes of roads, bridges, buildings, irrigation systems, water supply, earthworks; and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants”.

- ii. **Classification of Works:** The civil works are classified in GFR 2017 (Rule 130) into three categories: (a) Original Works (b) Minor Works and (c) Repairs Works. “Original works” means all new constructions, site preparation, additions and alterations to existing works. It also includes special repairs to newly purchased or previously abandoned buildings or structures, including remodeling or replacement. “Minor works” mean works which add capital value to existing assets but do not create new assets. “Repair works” means works undertaken to maintain building and fixtures. Expenditure on Repair Work does not add to the value of the asset and only restores the functionality of the asset. Repair Work can be further categorized as (i) Annual repairs covering routine and yearly operation and maintenance work on buildings and services (ii) Special repairs, which are undertaken as and when required, covering major repairs to existing buildings or services. Some types of the Special repairs may qualify to be categorised as ‘Original Work’ as mentioned earlier.

1.4. Standards (Canons) of Financial Propriety

Procurement done by units/divisions of AYCL is like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. Therefore, it may be useful to refer to the Rule 21 of the General Financial Rules, 2017, “standards of financial propriety”.

1.5. Public Procurement Infrastructure

- i. **Central Public Procurement Portal (CPPP)** – CPPP has been designed, developed and hosted by National Informatics Centre (NIC) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the CPPP is to provide a single point access to the information on procurements made across various Ministries and the Departments. It is mandatory for all units/divisions to publish on the CPPP all their tender enquiries and information about the resulting contracts. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

- ii. **Government e-Marketplace (GeM)** – To ensure better transparency and higher efficiency an online Government e-Marketplace (GeM– an e-commerce marketplace) has been developed for common use goods and services. In GeM product or services are offered by a number of eligible sellers and all the eligible buyers can view/compare all the product/services and select the product/services offered by any one of the seller. In general, because online marketplaces aggregate product/services from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores. The procurement process on GeM is online and electronic - end to end from placement of supply order to payment to suppliers.

The registration of suppliers on GeM is online and automatic based on ID authentication etc. The unit/division have to assess the reasonability of rates. Buyer's transactions are processed by the GeM portal and then product/services are delivered and fulfilled directly by the participating sellers. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities. More details are available in Rule 149, GFR, 2017. The Procurement of Goods and Services by Ministries or its Departments including AYCL are mandatory for Goods or Services available on GeM. Unit/division of AYCL are expected to work with GeM in making available on the GeM platform as many products/ services by making available such Goods and Services which are regularly procured by them.

1.6. Legal Aspects Governing Procurement of Works

A procurement contract, besides being a commercial transaction, is also a legal transaction. Several laws may affect various commercial aspects of procurement contracts. A procurement professional is expected to be generally aware of the implications of following basic laws affecting the procurement of works; however, he or she is not expected to be a legal expert. In different contexts of the scope of work, an additional set of laws may be relevant.

- i. The Constitution of India;
- ii. Indian Contracts Act, 1872;
- iii. Arbitration and Conciliation Act, 1996 read with The Arbitration and Conciliation (Amendment) Act, 2015;
- iv. Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- v. The Information Technology Act, 2000 (IT Act, regarding e-procurement and e-auction, popularly called the Cyber Law);
- vi. Right to Information (RTI) Act 2005;
- vii. Central Vigilance Commission Act, 2003;
- viii. Delhi Special Police Establishment Act, 1946 (DSPE – basis of the Central Bureau of Investigation);
- ix. Prevention of Corruption Act, 1988;
- x. Code of Criminal Procedure, 1973 (Sections 195(1) and 197(1));
- xi. Various labour laws applicable at the works' site;
- xii. Various building and safety acts, codes, standards applicable in the context of the scope of work;
- xiii. Various environmental and mining laws, codes, standards applicable in the context of the scope of work.

1.7. The Law of Agency – applicable to Procurement of Works

In addition to Laws which are applicable to Procurement of Works mentioned above, the Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) implies that Contractor would be an Agent of the Procuring Entity, to execute the works on its behalf. Hence, there exists a Principal/Employer and Agent relationship between Procuring Entity and such Contractor. As per this law, the employer 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 liable for such violations, under certain circumstances. The Procuring Entities need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.8. The Basic Principles of undertaking works:

- i. No new works should be sanctioned without

- a. Careful assessment of the assets or facilities already available and time and cost required to complete the new works.
 - b. A concept plan/preliminary drawing has been approved by the Authority competent to accord sanction. While designing projects to the extent possible, principles of Life Cycle Costing may also be considered;
- ii. Adequate budgetary provisions to be ensured for works and services already in progress before new works are undertaken.
 - iii. No project or work will be split up to bring it within the sanctioning powers of a lower authority.
 - iv. For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority. If the component parts of a project are mutually independent of each other and are not dependent on the execution of one or more such component parts, each such part should be treated as a separate project. In case the functioning of a project is dependent on the execution of one or more other projects, the entire group of such projects should be taken as a single scheme/project and provision made accordingly. If, however, a scheme consists of revenue component, capital expenditure and loan content, etc. the provision for which is required to be exhibited separately under respective Account Heads of the Unit/Division, there is no objection to the provision being made in the relevant Heads of Account; but the authorities concerned should ensure that the sanction of the Competent Authority is obtained for the integrated scheme as a whole depending on the total cost of the scheme. It will not be permissible in such cases to split up a scheme treating each part as a scheme to avoid the sanction of a higher authority.
 - v. Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authorisation, be applied to carry out additional work not contemplated in the original project.
 - vi. Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work first sanctioned, shall have to be covered by a supplementary estimate.
 - vii. The construction period and sanctioned cost stipulated in the sanction of Project will not be exceeded as far as possible.
 - viii. Unit/division shall put in place, as far as possible, empowered project teams for all large value projects and these teams should be tasked only with project execution and not given other operational duties.
 - ix. The unit/division's financial authority and unit head according administrative approval should be kept informed of the physical and financial progress of the work till their completion through regular periodical reports.
 - x. Subject to the observance of these general rules (Rule 130 – 141, GFR, 2017), the initiation, authorization, procurement and execution of works shall be regulated by detailed rules and orders. The detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD).
 - xi. No new project work valuing above INR 10.00 Lacs shall commence or liability incurred in connection with it until (not applicable for project work undertaken for client):
 - a. Feasibility Study Report/Preliminary Project Report (PPR) has been be prepared.

- b. A proper Detailed Project Report (DPR) has been prepared by a competent personnel/agency;
- c. Administrative approval (A/A) has been obtained from the appropriate authority, in each case;
- d. Expenditure Sanction (E/S) to incur expenditure has been obtained from the competent authority;
- e. Technical approval has been obtained of the detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared based on the schedule of rates maintained by CPWD or other Public Works Organizations or budgetary offer obtained during preliminary stage or reference of similar project executed earlier.
- f. Funds to cover the work, which will be executed, at least during the current year, have been provided by competent authority.
- g. Tenders have been invited and processed in accordance with rules.
- h. Award of work and execution of Contract Agreement;
- i. A work order has been issued.
- j. Time taken in grant of statutory and other clearances also contributes to the time and cost overrun in projects. Concerned Personnel/ Concerned Project Executing Authorities should plan for obtaining all necessary clearances quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding follow-up of obtaining the statutory clearances should be closely monitored.
- k. The process of site clearance/acquisition shall be started by the company, well ahead and completed entirely, or at least substantially, before the work is started. Availability of auxiliary services - like roads/access, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured. It is desirable to have 100% of the required site in possession before award of contract; however, it may not always be possible to have the entire site 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 site, which in the assessment of the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress. Minimum necessary encumbrance free site 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. Such site, non-availability of which, will prevent essential components of work from execution, should be insisted upon. Project Executing Authorities should plan for acquiring balance site quickly and proper efforts be made for the same, which also should be duly recorded. The progress regarding site acquisition should be closely monitored.

1.9. Processing of Works

Following are the stages in planning, sanctioning and execution of work.

- i. Perspective Planning for works;
- ii. Preparation of Preliminary Project Report (PPR) (If required) or Rough Cost Estimate;
- iii. Acceptance of necessity and issue of in-Principle Approval;
- iv. Preparation of Detailed Project Report (DPR) or Preliminary Estimate (PE);
- v. Administrative Approval and Expenditure Sanction (A/A&E/S) or 'Go ahead' Approval;
- vi. Detailed Design, Estimate and Technical Sanction;
- vii. Appropriation/ re-appropriation of funds;
- viii. Preparation of Bid documents, Publication, Receipt and Opening of Bids;

- ix. Evaluation of Bids and Award of Work;
- x. Execution and Monitoring of works and Quality Assurance.

Note: For any works up to INR 30 lakh, expenditure sanction may be given on the basis of Preliminary Project Report itself.

1.10. Administrative Control and Powers to Sanction

- i. Administrative control of works includes.—
 - a. assumption of full responsibility for construction, maintenance and upkeep;
 - 1. Proper utilization of buildings and allied works;
 - 2. Provision of funds for execution of these functions.
- ii. **Powers to Sanction Works:** The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Power (DOP) of the Company.

2. Preparation of Estimates

2.1. Perspective Planning for Works

Each unit/division shall prepare a perspective plan for undertaking different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.

2.2. Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate

- i. In case the work is to be executed under its own arrangement by the unit/division, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the concerned personnel/department based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/Features and Broad Specifications for specialised Equipment and Plants), Layout Plans etc., with the technical details/documents (please refer to Para 3.1.4 (iv) below or the Company to whom work is entrusted for execution shall prepare such PPR or Rough Cost Estimate and submit it to the requiring unit/division. Based on PPR and Rough Cost Estimate, the competent authority grants in Principle approval indicating approval of the concept and scope of the project at the rough cost assessed.
- ii. The preliminary project report shall provide the following details:
 - a. Background of the work/project justifying the need for the work
 - b. Details of scope of the project
 - c. Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate.
 - d. Availability of land/site - There should be a clear indication about the availability of land/site required for completion of whole project. The land/site shall be made available free of all encumbrances.
 - e. Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
 - f. Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/Preliminary Drawings prepared and their approval by the requisitioning authority.
 - g. Agency of Procurement – through direct procurement, outsourcing to Companies or otherwise (Refer Para 3.1 below).
 - h. Rough Cost Estimate: Unit/division may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of prevailing Plinth Area rates (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval.
 - i. If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
 - j. Cash flow: This will show year-wise requirements.
 - k. Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out.
 - l. Appendices:
 1. Requisition of the unit/division;
 2. Concept Plans/Preliminary Drawings
 3. Reference to approval of Concept Plans/Preliminary Drawings.
 - m. Any other relevant documents.

- n. 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 designated competent authority. This is to provide an opportunity for the 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 Company. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/project record.

2.3. Acceptance of necessity and issue of in-Principle Approval

Approval of competent financial authority and unit head for accepting the necessity of works and its scope should be sought based on PPR or Rough Cost Estimate and in Principle Approval of the concerned unit/division shall be made available for preparation of Detailed Project Report or Preliminary Estimates.

2.4. Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE)

- i. On receipt of in-Principle Approval of the project, the unit/division shall finalize the Detailed Project Report(DPR) giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:
 - a. Reference to Concept plan/preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
 - b. Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
 - c. Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency. Cash flow projection should show year-wise requirement. While designing the projects etc., if and to the extent possible, principles of Life Cycle Cost may also be considered;
 - d. Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
 - e. Details of land/site required along with land plan schedule to implement timely land/site acquisition procedures;
 - f. Environmental Impact Assessment (EIA) of the project and approval thereof, wherever applicable;
 - g. Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
 - h. List of Approval of Statutory Bodies required;
 - i. Annual plan allocation (Capex Budget) and cash flow;
 - j. Systems to be adopted for project monitoring;
 - k. Works accounting system;
 - l. Quality assurance system/ mechanism;

m. Bidding Systems - Single, two parts, pre-qualification, Post- qualification.

In case the work is being executed by the unit/division themselves, DPR and PE will be prepared by the unit/division itself.

For repair works costing up to INR 30 lakh, preparation of DPR and PE may be dispensed with, since repair work does not need detailed designing. Sanction may be accorded by the competent authority based on PPR itself.

- ii. Major reasons for the problem in works contracts (in particular relating to construction of roads, building etc. on item-rate or percentage rate basis) is the out-sourcing of preparation of Detailed Project Reports to consultants without sufficient relevant experience or giving them sufficient time to do so. It is therefore essential to stipulate & ensure successful project design/supervision experience while selecting consultants, especially for large works contracts. DPR in such contracts is required to be based on proper ground investigation at each specified stretch (normally 50 metres), called "reach", and the Consultant be directed to exercise such due diligence.
- iii. The involvement of the unit/division in providing proper inputs including user requirements during the preparation of the DPR and before accepting the draft DPR is paramount in ensuring successful implementation. Proper field surveys and investigations of ground conditions are critical in preparation of a reliable DPR. Providing scientifically valid data to bidders will depend on the quality of the investigations done by the DPR consultant.

As a corollary, the unit/division must insist on a qualified team of engineers with experience for carrying out DPR studies. It is also essential that the unit/division insists that the Consultant offers them technology options at the early stage of preparation of the DPR, so that a cost-efficient choice may be made using principles of Life Cycle Costing. In case the deviations between actual ground situation and the situation recorded in such DPR results in significant cost and time over-runs, the engineer, while doing valuation of variations [refer to Para 6.5.1 (iii)], must bring into notice the reach-wise differences and the unit/division may consider stringent action against the consultant who has prepared such DPRs, including debarment from future consultancy contracts, after following due procedure. Such clauses may be included in the contracts for preparation of DPR. Wherever consultants are appointed for preparation of DPR, field units of the unit/division 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.

- iv. Presentation may be made about the DPR before the competent 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 company. The record of discussions during the presentation shall become part of tender file/project record.

2.5. Administrative Approval and Expenditure Sanction (A/A and E/S)

Administrative approval and Expenditure Sanction (A/A and E/S) will be accorded to the execution of work by the Competent Financial Authority and Competent Authority as per DOP of the Company after due examination of Detailed Project Report and Preliminary estimates. Post Sanction changes in scope and specification lead to delay, loss of quality and contractual penalties therefore such A/A and E/S shall be accorded after carefully assessing their requirements. The estimates framed may be modified for such sanction only with their concurrence.

The sanction order should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with their share.

2.6. Detailed Designs, Detailed Estimates and Technical Sanction

Except where the work is to be undertaken in the EPC(Turnkey) mode, on receipt of sanction of the project, based on DPR or PE and assurance of funds, the unit/division in consultation with the Works Committee (as mentioned in para 3.1.4 (iv) below) shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or budgetary offer or previous procurements - so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. In case the work is to be executed through a third party, preparation of detailed design/estimates and technical sanction shall be done/accorded by that organization. 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 unit/division and the consultant (if any).

2.7. Appropriation of funds

Before taking up the execution of work it shall be ensured that proper funds are available to meet out the expenditure on the work. It should also be emphasized that the DPR consultant is able to provide realistic year wise requirement of funds. This information is necessary so that concerned unit/division may be intimated regarding the same. This will enable them to include such funds projection in their CAPEX budget.

2.8. Reference Documents used in preparation of Estimates

For preparation of estimates and during execution of work following reference documents are used. These may be separate for different regions, various types of works - Building, Electrical and Mechanical. Annexure 9 lists further resources regarding Procurement of Works.

- i. Plinth Area Rates which provide a quick but fairly accurate method of estimation of cost of buildings (e.g. CPWD/PWD).
- ii. Schedule of Rates for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date (e.g. CPWD/PWD). For non-scheduled items, rates may be finalized by a budgetary offer received from the vendors/offer from the previous procurement etc.
- iii. Analysis of Rates by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed (e.g. CPWD Analysis of Rates)
- iv. Specifications describing inputs, processes, tests and mode of measurement for each kind of work commonly executed (e.g. CPWD Specifications)

2.9. Procurement Planning

GFR 2017 [Rule 144 (x)] mandates that the unit/division shall prepare Annual Procurement Plan within 30 days of Budget approval, before the commencement of the year and the same should also be placed on the website.

3. Types of Contract, Bidding Systems and Modes of Procurement

3.1. Types of Contract

There is different basis for linking payments to the performance of Contract (called types of contracts). 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 Work. 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. Mostly used types of contracts are:

i. Lump sum (Fixed Price) Contract

- a. This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administrate because it is a fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.
- b. There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability may be recorded.
- c. As time is not linked to the payment, there may be tendency for the Contractor 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 progress of work per month is in line with planned and estimated time-line.
- d. Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. Thus is suitable for stereotype/repetitive residential buildings or other structures for which standard drawings are normally available. In case standard drawings are not available, the unit/division shall spell out the requirements in detail to enable the contractor to prepare their designs and drawings accordingly, and submit them to the unit/division for check and approval before construction
- e. A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- f. The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In The concept of priced "activity schedules" may be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.
- g. Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

ii. **Item rate (Unit Rate) Contract**

- a. For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the unit/division in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works.
- b. The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually $\pm 15\%$ per item] of the estimated quantity of the initial BOQ.
- c. This type of contract is suitable for all types of major works such as buildings, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties.
- d. Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/disputes or contract failure.

iii. **Percentage Rate Contract**

- a. For percentage rate contract, the contractors are required to quote rate as overall percentage above or below the total estimated cost.
- b. This type of contract works best when the work does not involve major design process and directions, and simple drawings are sufficient for execution. It saves on the time and effort of detailed design before the procurement process. This type of tender can be used in respect of for small and routine types of original works for which estimates can be made based on available schedule of rates and all repair works e.g. levelling and development works including such works as storm water drainage, water supply and sewer lines.
- c. Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill. The payment is made for the measured quantity. Contract provisions are made to determine the price of the items not included in SOR. In the absence of a standard schedule of rates, a project-specific schedule of items and their rates is drawn.

iv. **Piece Work Contract:** it is to be used mainly in following cases:

- a. The cases, in which it is necessary to start the work in anticipation of formal acceptance of contract, an agreement on piece work contract may be drawn and the contract may be cancelled as soon as regular contract is signed.
- b. For running contracts i.e. those for pipes, laying of sewerage etc. quotations are called periodically and a running rate contract is drawn up as a result of those quotations usually for one year. The piece work contract provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the unit/division may put an end to the agreement at his option at any time.

v. **Engineering, Procurement and Construction (EPC) Contracts**

- a. The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- b. Item Rate contracts may be substituted by EPC contracts wherever appropriate.

- c. Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications/performance standards. Unit/division specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The unit/division may bear the risk for any delays in handing over the land/site, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
- d. Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula.
- e. The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. Unit/division's engineer (also called owner's engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the unit/division on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by the unit/division.
- f. The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10% of the Contract Price or as mentioned by the client. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the unit/division or the client. If so provided in the Bid Document, unit/division is also liable to pay bonus (normally should not exceed 10%) to the Contractor for completion of the project before the scheduled completion date, if so provided in the contract documents.
- g. Monitoring and supervision of construction are undertaken through unit/division's engineer, acting as a single window for coordination with the contractor.
- h. Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of two years or as per the client's requirement may be specified in the Agreement in order to provide additional comfort to the unit/division.
- i. The selected unit/division's Engineer or the Consultant has to have good experience in design, project supervision and works management. The unit/division must have an experienced team to super check the quality of supervision exercised by the client's engineer, including quality of design review, site supervision, quality audits, etc. Periodic audits of the unit/division's Engineer functioning are desirable in ensuring that the unit/division's Engineer carries out his tasks professionally.

- j. In complex projects, a third party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check the unit/division's Engineer's diligence in the process.
- k. 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.
- l. 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.
- m. In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the PEC 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 ins this regard may also be incorporated.
- n. EPC contracts shall specify broad technical specification 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:
 - 1. Limitation of liability for unit/division as well as contractor.
 - 2. Deviation limits and procedure for change of scope.
 - 3. Contract closing timelines and procedure to ensure timely closing of contract.
 - 4. Performance parameters and liquidated damages for shortfall in performance
 - 5. Risk matrix and responsibilities of the contractor and the unit/division.
- o. In addition, a latent defect period beyond the defect liability period may be included to protect the unit/division and client's interest in case of any design/engineering defect after the defect liability period is over, wherever appropriate.
- p. To mitigate the risk involved in the methodology proposed by the contractor, the unit/division shall have an in-house engineering, quality assurance and project management expert intensively examine the proposal submitted by the contractor. Unit/division to ensure that optimal technological solutions are provided by the contractor.
- q. To ensure equality, regular inspection and quality checks must be carried out. The unit/division and/or the client shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

Note: The above instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors of the Company.

- vi. **Public Private Partnership (PPP):** PPP means an arrangement between a government/ statutory entity/ government owned entity on one side [Sponsoring (PPP) authority – or simply the Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession period) on commercial

terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

3.2. Bidding Systems

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

- i. **Single Stage Bidding System:** In single stage bidding, all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where technical requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;
- ii. **Single Stage Single Bid/Envelope System (1S1E):** Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for works and capability of contractor isn't critical and value of procurement is low or moderate, the single envelope system may be adopted, where eligibility, technical/commercial and financial details are submitted together in the same envelope. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract.
- iii. **Single Stage Two Envelope Systems (1S2E):** In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelope system may be followed:
 - a. If required, Technical specification and techno-commercial conditions may be modified, after the pre-bid conference in the two envelopes. The pre-bid conference is to be organised before the bid submission date. It may be necessary to issue the pre-bid conference minutes to all participants/upload to the web-portals and some revised RfQ/RfP documents where necessary.
 - b. The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelope, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelope, called the financial bid, the price quotations along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope, as it would not be desirable to invite financial bids after opening of techno-commercial bids;
 - c. The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the tender committee (TC) members with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;

- d. Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a pre-announced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;
- iv. **Single Stage Multiple Envelope System (with post-qualification, 1S3E):** As discussed below, where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below), a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope in a three envelope single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised by him. Strictly speaking, this is not a pre-qualification but a post-qualification of bidders (as in case of Single Envelope and Two Envelope Bidding). In the first instance on the bid opening date only the post-qualification envelope (also containing the EMD and other eligibility documents) is opened and evaluated to qualify the responsive bidders who pass the post-qualification. Rest of procedure is same as two envelope system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery;
- v. **Two Stage Bidding with Expression of Interest (EoI)**
- a. There are instances where the Works to be procured are of complex nature and the procuring unit/division may not possess the full knowledge of either the various technical solutions available or the likely Contractors for such Works. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring up gradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/ presentations with the experienced Contractors in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:
1. It is not feasible for the unit/division to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
 2. The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
 3. The unit/division seeks to enter into a contract for the purpose of research, experiment, study or development; or
 4. The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- b. The procedure for two stage bidding shall include the following, namely:
1. In the first stage of the bidding process, the unit/division shall invite EoI bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc. without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed Contractors, which are prima facie considered technically and financially capable of executing the proposed

work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement unit/division may also add those other stake holders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;

2. In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, the unit/division shall not modify the fundamental nature of the procurement itself;
 3. In the second stage of the bidding process, the unit/division shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
 4. Any bidder, invited to bid, but not in a position to execute the work due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that they may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
 5. If the unit/division is of the view that after EOI stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of EOI stage and it may be so declared in the EOI document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of EOI is called 'Non-committal' EOI.
- c. **Invitation of Eoi Tenders:** In Eoi tenders, an advertisement inviting expression of interest should be published. The invitation to the Eoi document should contain the following information:
1. A copy of the advertisement;
 2. Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
 3. Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;
 4. Formats for submission: This section should specify the format in which the bidders are expected to submit their Eoi;
 5. The Eoi document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and
- Pre-Notice Inviting Tender (NIT) Conference: In complex and innovative procurement cases or where the unit/division may not have the required knowledge to formulate tender provisions, a pre-NIT conference may help the unit/division in obtaining inputs from the industry. Such conferences should be widely publicised so that different potential suppliers can attend.

- d. **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI. Criteria used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criteria that are simple and unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt.

Table 1: An example of EoI eligibility criteria

Criteria	Sub-criteria	Weightage*	Break-up of Weightages
Past experience of the firm with similar requirements		A*	
Technical capabilities		D*	
Financial strength of the bidder		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	

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

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

vi. Pre-qualification Bidding (PQB)

- a. In high value contracts or complex technical requirements where capability of source of supply is crucial, for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding – please refer above). In PQB stage, competent qualified tenderers

are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Pre-Qualification Criterion (PQC).

- b. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition. *Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/normal mode of procurement of works and an eligibility criteria clause (post-qualification) as part of single/two envelope/cover tendering should suffice in normal routine situations. PQB bidding as a separate stage is contra-indicated in the following circumstances:*
1. Where procurement can be done through limited tender enquiries;
 2. Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, routine residential buildings; and
 3. *Where the procurement is of medium value (say less than INR 100 crore) or moderately complex in nature and the time, effort and money required from the bidder to participate in a tender is not very high, a clear-cut, (preferably fail-pass) post-qualification criteria can be specified in a three envelope single stage bidding (instead of separate PQB bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.*

- c. **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable bidder/contractor. Otherwise, it can lead to higher prices of procurement/works/services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable bidder/contractor and thus vitiate fair competition for capable bidders/contractors to the detriment of the unit/division's objectives. A misjudgement in either direction may be detrimental. Certain guidelines regarding the framing of PQC have been laid down. Due consideration should be given while framing PQC, to its effect on adequacy of competition. PQC should therefore be carefully decided for each procurement with the approval of competent authority (CA). It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria. Specific criteria of 'pass' for each attribute will be as specified in the standard pre-qualification document. A bidder may be awarded more than one contract in a Tender if he: (a) meets the PQC of each of them; (b) demonstrates having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and (c) has bidding capacity at the time of bidding, as calculated by the above formula, more than the total estimated cost of these works. The attributes PQC should cover inter-alia:

1. General Construction Experience: Annual Turnover

The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50% of which is from Engineering (Civil/ Electrical/ Mechanical as relevant to the work being procured) construction works) carried out in any of the year over a stated period (normally 5 to 7 years, ending 31st March of previous year), calculated by applying an appropriate multiplier to the projected annual construction expenditure on the subject contract. The multiplier of 2 may be used, but for very large contracts should not be less than 1.5.

- 2. Particular Construction Experience and Key Production Rates The applicant should have:**
- A. successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following:
 - a. Three similar completed works costing not less than the amount equal to 40% of the estimated cost; or
 - b. Two similar completed works costing not less than the amount equal to 50% of the estimated cost; or
 - c. One similar completed work costing not less than the amount equal to 80% of the estimated cost; and
 - B. Definition of “similar work” should be clearly defined.

The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the unit/division may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.
 - C. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.

The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. Substantial completion shall be based on 80% (value wise) or more works completed under the contract. (Note: Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant’s share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening.

Certificate for ‘substantial completion’ of project/work/asset should contain two parts. Part -I shall contain ‘financial value of work done’ and part-II shall contain ‘certificate of functional completion of project/work/asset’.

- 3. Financial Capabilities:** The applicant should have: (i) access to, or possess available liquid assets and other financial means (independent of any contractual advance payments) sufficient to meet the construction cash flow requirements for the subject contract, of the certain minimum amount specified; (ii) adequate sources of finance to meet the cash flow requirements of works currently in progress and for future contract commitments; and (iii) financial soundness as established by audited balance sheets and/ or financial statements. Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the estimated cost.

- 4. Personnel Capabilities:** The applicant's key personnel, as listed in the pre-qualification document, should meet the requirements of qualification and experience specified. The pre-qualification criteria should, refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (for example, superintendents specialised in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:
- A. A minimum qualification related to the work, if considered desirable;
 - B. A minimum number of years of experience in a similar position; and
 - C. A minimum number of years of experience and/ or number of comparable projects carried out in a specified number of preceding years.
- 5. Equipment Capabilities:** The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of equipment, in full working order, and satisfy that, based on known commitments; it will be available for timely use on the proposed contract. The pass–fail criteria adopted should be limited only to those bulky or specialised items that are critical for the type of project to be implemented (say heavy lift cranes and piling barges, dredgers, asphalt mixing plants), and so on. Contractors may not own the specialised items of equipment, and may rely on specialist sub-contractors or equipment–hire firms.
- 6. Available Bid Capacity:** The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:
 Available bid capacity = $A \times M \times N - B$, where
 A = Maximum value of engineering (Civil/ Electrical/ Mechanical as relevant to work being procured) works executed in any one year during the last five years (updated at the current price level), taking into account the completed as well as works in progress.
 M = Multiplier Factor (usually 1.5)
 N = Number of years prescribed for completion of the work in question.
 B = Value (updated at the current price level) of the existing commitments and ongoing works to be completed in the next 'N' years.
- 7. Pre-qualification of JV:** JV members are “jointly and severally responsible and liable” in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:
- A. Qualifying factors to be met collectively: (i) annual turnover from construction; (ii) particular construction experience and key production rates; (iii) construction cash flow for the subject contract; (iv) personnel capabilities; and (v) equipment capabilities;
 - B. Qualifying factors for lead partner: (i) Annual Turnover from Construction; (ii) particular construction experience; (iii) financial capability to meet cash flow requirement of subject contract—not less than of 50% of the respective limits prescribed in case of

individual contractors may be accepted; (iv) adequate sources to meet financial commitments on other contracts; (v) financial soundness;

C. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25% may be accepted instead of 50%.

8. Disqualification: Even if an applicant meets the eligibility criteria (Please refer Chapter 4 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

A. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;

B. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non- performance, such as the most experienced partner (major partner) of JV pulling out;

C. On account of currency of debarment by any Government agency.

d. Advertisement and Notification: The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. A minimum period of 21 days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 days. The PQB documents should also indicate

1. Scope of work (in physical as well monetary terms);
2. Pre-qualification criteria for single contractors and joint ventures;
3. Disqualification clause for misleading statements, or the applicant found to be ineligible on the basis of facts;
4. Various questionnaires and forms, required to be answered and filled by the prospective applicant, in support of pre-qualification;
5. Form of affidavit by the applicant in certification of the statements made and information given by him;
6. Indicative requirements of qualifications and experience of key personnel for the project;
7. Indicative requirements of annual production rates of key items of work;
8. Indicative requirements of major plant and equipment;
9. Indicative quantities of major items of work;
10. Description of the project area, its climate and language, site of work and means of access;
11. Key plan of project area along with the site plan.

e. Empanelment of contractors: Unit/division 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. 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.

- f. **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The unit/division shall evaluate the qualifications of bidders only in accordance with the PQC specified.

- g. **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the unit/division shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months. EoI should clearly specify the duration for which the pre-qualification criteria(s) is valid. After the expiry of such duration whenever a subsequent procurement shall be carried out, fresh pre-qualification criteria shall be incorporated in such tender documents.

3.3. Electronic Procurement (e-Procurement)

Rule 160 of GFR 2017 makes it mandatory for unit/division to receive all bids through e-procurement portals in respect of all procurements. Unit/division which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far, may use e-procurement solution developed by NIC i.e. Central Public Procurement Portal (CPPP). Unit/division may either use CPPP or engage any other service provider following due process. There are other service providers in Public Sector (e.g. MSTC) and Private sector which can be utilized for e-Procurement. In case of foreign tenders, Competent Authority to decide the tender may exempt such case from e-procurement as the bidders may face problems in obtaining digital signatures which is pre-requisite for bidding. Details about the process of e-procurement are available from the service providers. The e-procurement solutions meet all the requirements notified by Department of Information Technology under the Guidelines for compliances to Quality requirements of e-procurement systems published on the e-Governance Standards Portal (<http://egovstandards.gov.in>)

3.4. Modes of Tendering

Offers from prospective bidders in procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance. There are laid down procedures for delegation of powers of procurement to various competent authorities under different modes as shown in DOP. The various modes of procurement that can be used in public procurement of works are:

- a. Open Tender Enquiry (OTE); and
- b. Global Tender Enquiry (GTE);
- c. Limited Tender Enquiry - LTE (up to INR 5 lakh); [Rule 139 (iii) of GFR, 2017]

- d. Single Tender Enquiry (STE) or selection by nomination;
- e. Award of Work through Quotations.

i. Open Tender Enquiry (OTE)

a. In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. The systemic cost of this procedure may be high enough to be unviable for smaller value procurements. OTE procedures through e-procurement or through traditional tendering should be adopted for procurement values above INR 5 lakh.

b. Terms and Conditions

1. Participation should not be restricted to only Bidders enlisted with the unit/division. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with the unit/division, before contract is placed on them.
2. GFR 2017 (Rule 159) makes it mandatory for all Ministries/ Departments of the Central Government, their attached and Subordinate Offices and Autonomous/Statutory Bodies to publish their tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and AYCL's website. The unit/division should also post the complete bidding document in AYCL's web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders; and
3. The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 4.
4. The sale/availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should be available for download free of cost up to the date of opening of tenders. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.
5. The unit/division shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

ii. Global Tender Enquiry (GTE)

a. GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. The point of balance between VfM and cost/complexity of procedure is further aggravated as compared to OTE. Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:

1. Where required Technology/specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
 2. Very high value contracts (unit/division may adopt threshold limit e.g. above INR 100 crore) or where absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders where participation of International bidders would enhance value for money.
- b. Terms and Conditions
1. Publishing of tenders may be done as described in case of OTE above. In addition, in GTE tenders copies of NIT should be circulated to Indian Embassies in relevant countries and embassies of those countries in India; and;
 2. The tender documents, shall be priced minimally (if at all priced) keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
 3. GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies or a mix of any of these currencies;
 4. GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
 5. The due date fixed for opening of the tender shall be usually about four to six weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement.
- iii. No Global Tender Enquiry (GTE) up to INR 200 crores** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Ministry or Department feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.
- a. The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.
 - b. The proposals shall be submitted along with duly filled format.
- iv. Before sending the proposals for approvals of the Global Tenders, following is to be ensured:**
- a. Domestic open tender must be floated to identify the domestic manufacturers/service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the unit/division has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05. 2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.

- b. The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/service providers.
- c. The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

v. Exemptions/ Clarifications

- a. On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases.
- b. On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc, which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases.
- c. Where unit/division need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020.

vi. Limited Tender Enquiry (LTE)

- a. LTE is a restricted competition procurement, where a preselected list of bidders (enlisted with the unit/division) is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold. LTE procedures should be default mode of procurement when the estimated value of procurement is less than INR 5 lakh or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature.
- b. Terms and Conditions
 - 1. Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are enlisted bidders/contractors. Further, unit/division should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP) and AYCL website. Under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
 - A. Inadequate Competition
 - B. Non-availability of suitable quotations from enlisted bidders
 - C. Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.
 - 2. A simplified Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved bidders/ contractors are available, LTE may be sent to the available approved bidders/contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Bidder Enlistment section.

vii. Single Tender Enquiry (STE) or Selection by Nomination

- a. The selection by direct negotiation/nomination is called a single tender. This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and may also strain the transparency principle, it should be resorted to only under following conditions:
 1. There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by unit/division nor the result of dilatory conduct on its part.
 2. Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25% of the original contract value;
 3. In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
 4. Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
 5. Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the unit/division.

- b. Terms and Conditions
 1. The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down at in DOP, prior to single tendering. Powers of procurement of STE are more restricted.
 2. The unit/division shall ensure fairness and equity, and shall have a procedure in place to ensure that: the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
 3. All works/purchase/consultancy contracts awarded on nomination basis should be brought to the notice of following authorities for information-
 - A. The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
 - B. The Chief Executive of the organisation where such a managing body is not in existence.

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

viii. Award of Work through Quotations

- a. Use of quotations up to INR 5 lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- b. Unit/division shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.

- c. Unit/division shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the goods themselves, such as, transportation and insurance charges, duties and taxes are to be included in the price.
- d. Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
- e. Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

ix. Award 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 money is locked up in assets which cannot be utilized, apart from inconvenience due to such half completed works.

Notwithstanding anything in the GFR or the Manual, unit/division 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 of the original tender approval as per DOP. Also, the proposal should be routed through the TC members with proper justification and documentation.

- x. **Back to Back Tie Up:** Unit/division while awarding the work will take following points into consideration:
 - a. Unit/division as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
 - b. Open tenders to be invited for selection of sub-contractors/pre-tender associate(s) as far as possible.
 - c. In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the panel approved in the following manner. Panel of contractors are to be prepared for different categories monetary limits, regions, in a transparent manner clearly publishing the eligibility criteria etc. The above panel is to be updated every year.
 - d. Tenders to be opened confidentially in front of the TC members to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officers opening the tender and kept confidentially. This should be available for perusal when required by audit/ vigilance.
 - e. The terms and conditions of the contract of the client especially those pertaining to subletting of works should be strictly adhered to by the unit/division.
 - f. Adequate staff to be deployed by the unit/division to ensure quality in construction etc.
 - g. The record of enlistment/updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

4. Preparing Bid Documents, Publication, Receipt and Opening of Bids

4.1. Bid Documents

- i. The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.
- ii. In case of a limited tender, instead of a full set of SBD, only a machine numbered simplified tender form is used as the tender document, after filling up the name of the bidder and details of requirements. It has the “terms and conditions of tender” printed on the obverse side. In any case, all enlisted bidders, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the enlistment application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.
- iii. While SBDs would be complete in itself and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects:
 - a. Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;
 - b. Limitation or preference for participation by bidders in terms of the government policies in accordance with Procurement (Preference to Make in India), Order 2017 dated 28.05.2018 issued by Department of Industrial Policy & Promotion etc.);
 - c. The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the contractor’s eligibility to receive such a government contract). The qualification criteria should take care of the contractor’s past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
 - d. Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
 - e. The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
 - f. Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. Names and contact details of IEM in case of Integrity Pact;
 - g. Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/ highest as the case may be) bidder should be clearly indicated in the bidding documents;
 - h. Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and
 - i. Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

- j. The names, designations and addresses of one or more officers of the unit/division who are authorized to communicate directly with and to receive communications directly from contractors or contractors in connection with the procurement proceedings.
- k. Any formalities that will be required once a tender has been accepted for procurement contract to enter into force.
- l. Tender Documents
 - 1. The tender document is the fundamental document in the 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 unit/division 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 & solid 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.
 - 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.
 - 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.
 - 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.
 - 5. Unit/division may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.
 - 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.
 - 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.
 - 8. Technical and Financial Eligibility Criteria for the bidders are important in the 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 balancing considerations of quality, time and cost.
 - 9. Open online tendering should be the default method to ensure efficiency of procurement. Unit/division should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.
 - 10. Pre-bid conference may be conducted for large value tenders. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the company's website.

4.2. Preparation of Bid Documents

- i. The bid documents must be based on relevant Standard Bidding Documents for the Type of Contract (Lump Sum, Item Rate Etc); Estimated Value range, Bidding System (Single Envelope/ Two Envelope/ PQB) etc. SBD for e-procurement would be slightly different from the traditional SBD. To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Appendix to Instructions to Bidders or Special Conditions of Contract. Before floating the tender, the Bid Document should be got approved by the competent authority. The contents of Bid Documents would therefore vary, but will generally comprise the following:

Volume 1

- a. Notice Inviting Tenders (NIT)
- b. Section I Instructions to Bidders (ITB) and Appendix to ITB (AITB)
- c. Section II General Conditions of Contract (GCC)
- d. Section III Special Conditions of Contract (SCC)

Volume 2

- a. Section IV Technical Specifications

Volume 3

- a. Section V Forms of Bid
- b. Section VI Bill of Quantities
- c. Section VII Standard Formats: Bid Security, Performance Security, Advance Payment Security, Form of Agreement
- d. Section VIII Schedules for Supplementary Information
- e. Section IX Sample Forms for updating qualification information, and so on

Volume 4

- a. Section X Drawings

Volume 5

- a. Section XI Documents to be furnished by the bidder

- ii. **Special Conditions of Contract (SCC):** Any additions, deletions, or variations to the GCC felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project-specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:
 - a. Where the wording in GCC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
 - b. Where the wording in GCC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
 - c. Where the type, circumstances or locality of the works requires additional clauses or sub-clauses; and

d. Where the laws of the country, or exceptional circumstances, necessitate alterations in GCC. Such alterations are effected by stating in SCC that a particular clause, or part of a clause in GCC, is deleted and giving the substitute clause or part, as applicable.

iii. **Bid Validity:** A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 60 days for OTE and 90 days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify their bid.

Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

4.3. Publication of Bid Documents

It is mandatory to publish the tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) and AYCL's website also. GFR 2017 has dispensed with advertisements in Newspapers. However, in exceptional circumstances, unit/division may issue the advertisement in newspapers as deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded. Individual cases where confidentiality is required, would be exempted from the mandatory e-publishing requirement. The decision to exempt each case on the said grounds should be approved by the Company's Head/CMD with the concurrence of the Unit/Divisional Head and Corporate Finance Head. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders. To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters. In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and AYCL's website with a note saying:

"This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected unit/division's enlisted contractors. Unsolicited offers are liable to be ignored. However, contractors who desire to participate in such tenders in future may apply for enlistment with unit/division as per procedure."

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

Tender submission dates may be extended by the unit/division in order to reply queries in the pre-bid meetings or inadequate participation or any other justifiable reason.

4.4. Issue/ Availability and Cost of tender documents

The sale/availability for downloading of tender documents against NIT should not be restricted. Tender documents should preferably be sold/ available for download up to the date of opening of tenders. The unit/division should also post the complete tender document in AYCL's website and on CPPP to enable prospective tenderers to make use of the document downloaded from the website. The advertisement

for invitation of tenders should give complete web-address from where bid documents can be downloaded.

4.5. Eligibility and Qualifications of Bidders

i. Eligibility of Bidders

- a. All eligible bidders meeting the eligibility criteria as defined in ITB can participate in the tender. The applicant should be a private or government-owned legal entity.
- b. Bidder should have valid registration with Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952'.
- c. For package size exceeding certain values [say - INR 10 crore], Joint Ventures may be allowed. Maximum number of partners in JV shall be limited (say – three). In case of JV, all the partners shall be jointly and severally liable for the successful completion of the work.
- d. A firm that has been engaged by unit/division to provide consultancy services for the preparation or implementation of a project, and any of its affiliates (associates, subsidiary, JV partner), shall not be eligible for subsequently providing goods or works (other than a continuation of the firm's earlier consultancy services) for the same project.
- e. A firm determined non-performing by the unit/division shall not be eligible to bid during the period so determined.
- f. The bidder must not have in his employment:
 1. The near relations (defined as first blood relations, and their spouses, of the bidder or the bidder's spouse) of persons involved in decision making in the procurement as listed in the Appendix to ITB.
 2. Without Government permission, any person who retired as gazetted officer within the last two years of the rank and from the departments listed in the Appendix to ITB.

- ii. **Qualification of Bidders:** Qualification of bidders is done on pre-qualification bidding basis (refer Chapter 3, PQB) or on post-qualification basis (refer Chapter 3, single stage multiple envelope system). In both cases Qualification criteria needs to be laid down in the Bid Document (refer Chapter 3). It is of utmost importance to develop new contractors and also to provide avenues to sub-contractors, since they may not get opportunities to accumulate the required credentials to compete in normal tenders. To enable a window of entry for such Start-ups and sub-contractors, in small value contracts (e.g. repair contracts upto INR 30 lakh) the requirements regarding General Construction Experience, Particular Construction Experience and Available Bid Capacity may not be insisted upon provided the bidders fulfil other criteria regarding Financial/ Personnel/ Equipment capabilities [refer Chapter 3]. However, to avoid overstretching of their resources, no such contractors may be allowed to hold more than 2 contracts under relaxed credentials, at any given time.

4.6. Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may notify the unit/division in writing, well before the due date of submission of bids, and a response must be sent in writing regarding the clarifications sought prior to the date of opening of the tenders. Copies of the query of any bidder and clarification issued must be sent to all prospective bidders who have received the tender documents. There shall be no asymmetry of information as regard to any bidder.

4.7. Amendment of Tender Documents

At any time prior to the date of submission of bids, the unit/division may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/ speed post/ courier/ email to all known prospective bidders and shall be published on CPPP. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale, if any), including the tender documents uploaded on the website. When the amendment/ modification changes the requirement significantly and/ or when there is not much time left for the tenderers to respond to such amendments, it is better to prepare a revised tender and the time and date of submission of tenders are also to be extended suitably. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry. This is very critical as the amendment may lead to any new bidder meeting the qualifying criteria and publicity is required to ensure a level playing field.

4.8. Pre-bid Conference

In case of turnkey contract(s) or contract(s) of special nature for procurement of sophisticated and costly work/services/equipment or wherever felt necessary, a suitable provision is to be kept in the bidding documents for inviting the bidders or their official representatives to attend one or more pre-bid conference at a specified place and time, for clarifying issues and clearing doubts, if any, about the specifications/ Terms of Reference and other allied technical/ commercial details of the work, services, plant, equipment and machinery etc.

Bidders should be asked to submit written queries in advance of the conference. After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the competent authority. In order to bring clarity to replies, all questions/answers and needed amendments should be merged in the sequence of clauses in the bidding document. It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in a comprehensive way. Minutes of the meeting, including the text of the questions raised and the responses given, shall be transmitted without delay to all purchasers of the bidding documents. The techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents. These pre-bid minutes shall be published along with the bid documents on the appropriate website including CPPP. After the issue of clarifications/modifications consequent to the pre-bid meeting, suitable time should be given for submission of bids.

4.9. Submission of Bids by Bidders

- i. The unit/division shall fix a place and a specific date and time as the deadline for the submission of tenders. The bid shall be submitted by the bidder well before the deadline (original or extended as the case may be) for submission (to avoid rush in internet traffic). The use of offline mode of tendering shall be done only under the circumstances where exemptions for e-Procurement are provided as per extant instructions.

Part 1 Technical Bid: The technical bid shall be hardbound (in other than e-Procurement) and all pages serially numbered. Hardbound implies such binding between two covers through stitching

or otherwise whereby it may not be possible to replace any paper without disturbing the document. In e-Procurement, the submission would be online.

1. Bid security for an amount and in form as specified in ITB;
2. Power of attorney;
3. Qualification information and supporting documents (if prequalification has been done, original qualification will be updated);
4. Evidence of access to a revolving line of credit;
5. Undertaking for making available the required key equipment as specified;
6. Undertaking for making available the required key personnel as specified;
7. Annual audited turnover;
8. Current contract commitments/ works in progress;
9. Financial data;
10. Additional information regarding litigation, debarment, arbitration, and so on;
11. Joint Venture (JV) agreement (or a letter of intent to create a JV in case of award of Contract) in case the bidder is a JV;
12. Proposed methodology and programme for execution of work duly supported by equipment planning and QA procedures proposed to be adopted by the bidder; and
13. Affidavit concerning Submission of Bid and abiding by Bid Conditions.

Part II Financial Bid

1. Form of bid – duly filled in and signed on each page; and
2. Priced BOQ – duly filled in and signed on each page. Each part will be separately sealed and marked as per instructions.

ii. Quality-cum-cost based Selection (QCBS) for works and Non-Consultancy Services:

- a. Unit/division are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:
 1. Where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or
 2. For procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause does not exceed INR 10 crore)

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

- i. 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.
 - ii. In all other cases, the procurement process is to be scrapped and restarted either as QOP or on n on QCBS basis.
- b. 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%. The Competent Authority for allowing QCBS shall be as follows:-
 1. For declaring a procurement as QOP: Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

2. or Non-Consulting Services not exceeding INR 10 crore in value: 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.
- c. In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition: -
1. Two or more persons who have expert knowledge and /or long experience relevant to the procurement in question;
 2. One or more persons with extensive experience in handling projects and/or finance;
 3. One or more persons with experience in financial management/financial administration/audit/accountancy;
 4. Note more than one member representing the procuring entity who may *inter alia* provide administrative support to the Committee.
- d. The names of members of the Special Technical Committee shall be decided either by the Competent Authority 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.
- The STC shall make specific recommendations on the following matters:
1. The weight to be given to non-financial parameters (not exceeding 30%).
 2. The specific quality/technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for enduring fair and transparent quality/technical evaluation of the bids.
- e. The recommendations of the STC shall be followed except where there are special grounds in interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority who approved the declaration of the procurement as QOP.
- f. In respect of QCBS for Non-Consultancy Services not exceeding INR 10 crore, a Technical Committee shall be constituted to carry out functions in lieu of the STC.
- g. Grounds for Declaring a Procurement to be Quality Oriented Procurement (QOP): 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/prequalification-based/least cost system shall be documented.
- h. Tender Documents-Fixing/Selection of the Evaluation/Qualification Criteria
1. 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.
 2. Weightage may also be given for timely completion of past projects of similar nature by the bidder.
 3. 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.

i. Fixing of Scoring/Marketing Criteria:

1. 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 outcome is 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.
2. It is better to specify minimum marks for meeting the qualifying criteria specified.
3. Examples of fixed quality parameters that ought not to be considered for relative scoring including organizations' ISO/standards accreditation etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between the various bidders.
4. 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.
5. 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.
6. Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPI) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

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

k. Joint Ventures in QCBS

1. 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.
2. If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure should be taken to ensure that all the JV partners are present and deliver services all through the contract period. 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.

Note: instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors of the company.

- iii. Sealing and Marking of Tenders:** In case of two envelope bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate inner covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before... (due date & time of tender opening) are also to be put on these envelopes and these sealed inner covers are to be put in a bigger outer cover which should also be sealed and duly super scribed in a similar manner. If the outer envelope is not sealed and marked properly as above, the unit/division will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB and AITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.
- iv. Withdrawal, Substitution and Modification of Tenders:** The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

4.10. Receipt and Opening of Bids

The tender received by the unit/division after the deadline for the submission of tender, shall not be opened and shall be returned to the contractors or contractors that submitted it. No submission is allowed in e-Procurement after the submission deadline.

Immediately after the deadline for bid submission, unit/division shall proceed to the bid opening at the appointed date & time as declared in the tender/bid document. In e-procurement, bids are opened online. In offline tenders, bidder shall be invited to attend the tender opening in each tender irrespective of value. Tender to be opened by any two members of the tender committee (TC), one of whom must be from finance, would open the sealed tender envelope(s) in presence of the tenderer(s) or their representative(s). In case of tea gardens, sealed tender shall be opened jointly by the respective Manager and Asst. Manager and the Group Accountant wherever available in presence of intending bidders:

- i. The unit/division shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official of the purchase team;
- ii. Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- iii. For bulky/ oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents
- iv. The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE, are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document.

- All bid-opening activities should be carried out demonstrably before such a gathering. The prescribed format for the bid opening attendance sheet and report are given at Annexure 4;
- v. At a prescheduled date and time, two members TC should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/ altering/ withdrawal of bids. TC members present should ensure and demonstrate that bid envelopes are duly sealed and un- tampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered;
 - vi. After opening, every tender shall be numbered serially (say 3/ 14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the TC members present. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the TC members.
 - vii. Erasure/ cutting/ overwriting/use of whitener/ columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/ amount is written only in figures, the TC members should write them in words. All rebates/ discounts should be similarly circled, numbered and signed. In the absence of any alteration/ overwriting/ whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”
 - viii. TC members to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that TC members have no authority to reject any tender at the tender opening stage;
 - ix. A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the TC members, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.
 - x. In the event of postponement of tender opening on the scheduled date due to any reason e.g. change in the tender terms and conditions; change in the specifications etc., equal opportunities shall be given to all the bidders by notifying the change sufficiently in advance of the revised opening date. Such postponement of Tender Opening Date shall be made in the same mode and means followed as in case of initial tender notification.

4.11. Bid Security/ Earnest Money Deposit (EMD)

To safe guard against a bidder's withdrawing or altering its bid during the bid validity period in the case of OTE and GTE tenders, bid security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document. Bid Security or EMD can be waived in the following cases and the same to be ensured by Tender Committee (TC):

- i. For Contract value upto INR 5.00 Lakhs.
- ii. Procurement by Brand name or through authorised dealers/distributor of manufacturer of the particular brand; however, in such cases, EMD will be applicable mandatorily for tenders of value over and above INR 5.00 lakhs;
- iii. Procurement from the vendor whose turnover is more than INR 50 crores
- iv. Procurement from Micro, Small and Medium Enterprises (MSMEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry of Department.
- v. Procurement from Startups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT)
- vi. Procurement from vendor who has substantial dues (more than 5% of the estimated tender value) from the unit inviting tender.
- vii. For Tea Garden, EMD exemption is applicable for purchase of tea seeds and tea plants (saplings).

For Clause (iii), (iv) & (v) above, proper documentary evidences (certified copy) to be furnished preferably in the techno-commercial proposal of the bid. If any bidder has any dues from the unit/division inviting tender, EMD may be adjusted against such dues on the basis of specific request of the vendor in writing preferably in the techno-commercial proposal of the bid. If reason for non-submission of EMD or documentary evidence of MSE/Startups or request letter for adjustment against the outstanding balance for EMD is not mentioned in the techno-commercial proposal of the bid, the tender will be rejected.

The Bid Security may be obtained in the form of Insurance Surety Bonds, account payee demand draft, fixed deposit receipt, banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. The bid security is normally to remain valid for a period of 45 (forty- five) days beyond the final bid validity period.

In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval in the case of indigenisation/ development tenders, limited tenders and Single Tender.

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

A bidder's bid security will be forfeited if the bidder

- a. withdraws or amends its/ his tender;
- b. impairs or derogates from the tender in any respect within the period of validity of the tender;
- c. If the bidder does not accept the correction of his bid price during evaluation; and
- d. If the successful bidder fails to sign the contract or furnish the required performance security within the specified period.

Bid Security or EMD: In case of OTE, GTE or LTE, bid security or EMD is mandatory. The amount of bid security to be fixed as follows, rounded off to the nearest thousands of Rupees, as determined by the unit/division:

Total Estimated Tender value or Last Purchase Order	EMD amount
INR 50 lakhs & above	0.5% of the Estimated Tender Value
Upto INR 50 lakhs	1.0% of the estimated Tender value

4.12. Performance Guarantee

- i. To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of 5% to 10% of the value of the contract. In works contract it is usual to take 5% of contract value Performance Security. Performance security may be furnished in the form of Insurance Surety Bond, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/ confirmed from any of the commercial bank in India or online payment in an acceptable form, safeguarding the Procuring Entity's interest in all respects. In case of a JV, the BG towards performance security shall be provided by all partners in proportion to their participation in the project. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities. Submission of Performance Security is not necessary for a contract value upto INR One (01) lakh.
- ii. Performance Security is to be furnished by a specified date [generally 14 days after notification of the award] and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the contractor, including Defect Liability Period (DLP).
- iii. The performance security will be forfeited and credited to the unit/division's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes all obligations under the contract but not later than 365 days of completion of the Defect Liability Period (DLP). Return of Bid/Performance Securities should be monitored and delays should be avoided. If feasible, the details of these securities may be listed in the e- Procurement Portal, so as to make the process transparent and visible.
- iv. Before the publishing of a particular tender, waiver for submission of the Performance Security by the successful contractor may be taken from the Unit Head/Functional Director and Unit Financial Head citing proper justification. In this scenario, a percentage (usually 5%) of each running bill (periodic/interim payment) to be withheld as Performance Security till the date of completion of all contractual obligations of the contractor, including Defect Liability Period (DLP).

4.13. Security Deposit/ Retention Money

In addition to Performance Security, Contracts for works usually provide for a percentage (usually 5%) of each running bill (periodic/interim payment) to be withheld as Security Deposit/retention money until final acceptance. The earnest money instead of being released may form part of the security deposit. The contractor may, at his option, replace the retention amount with an unconditional BG from a bank acceptable to the unit/division at the following stages:

- i. After the amount reaches half the value of the limit of retention money; and
- ii. After the amount reaches the maximum limit of retention money. One-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking-over certificate; if the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the

engineer may determine, having regard to the value of such part or section. The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 365 days after the DLP of the works or final payment, whichever is earlier, on certification by the engineer. In the event of different defect liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

4.14. Sources and Verification of Bank Guarantees

Bank Guarantee for Bid Security (EMD) or Performance Guarantee (Security Deposit) should be irrevocable and operative Bank Guarantee (BG) as per format enclosed in the Bid Document and should be issued by a Scheduled Commercial (i.e. Indian or Foreign Banks included in the Second Schedule of Reserve Bank of India Act, 1934 excluding Co-operative banks or Regional Rural Banks). In case of foreign bidders or in case of GTE, if Bank Guarantee is from a foreign bank branch situated outside India, the Bank Guarantee must be issued through any of the Scheduled Commercial Bank. In case BG is issued directly by a bank outside India, it should be executed on Letter Head of the Bank and should be advised and made payable through their Indian Branch/Corresponding Bank in India. The Issuing Bank should also state the name and designation of the next Higher Authority of the Officials who have issued the Bank Guarantee.

Bank guarantees submitted by the tenderers/ contractors as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/ advance payments and for various other purposes are as follows:

- i. BG shall be as per the prescribed formats
- ii. The BG contains the name, designation and code number of the Bank officer(s) signing the guarantee(s);
- iii. The address and other details (including telephone no.) of the controlling officer of the bank are obtained from the branch of the bank issuing the BG (this should be included in all BGs);

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

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

As far as possible organizations should follow e-verification of bank guarantees as per the procedure prescribed by Reserve Bank of India.

Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following prescribed method for the same and the unit/division should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

4.15. Safe Custody and Monitoring of Securities

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented by each unit/division. The unit/division shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the contractor for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc. For release of BGs, the proposal shall be forwarded by the executing agency with its recommendations in accordance with the contract conditions, for approval by the CA with the concurrence of the Unit/Divisional Finance.

4.16. Goods and Services Tax (GST)

- i. A detailed clause regarding GST may be included in the bid documents, in consultation with the Unit/Corporate Finance, stipulating inter-alia that all the bidders/ tenders should ensure that they are GST compliant and their quoted tax structure/rates are as per GST Law. While before enactment of GST, the bid prices were normally inclusive of applicable taxes, now after its enactment, as per the GST Act the bid and contract must show the GST Tax Rates and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). Asking for a bid-price inclusive of taxes/GST would be a violation of the GST Act. Bid format may be suitably modified accordingly. In the transition period, any variation in tax structure/rate due to introduction of GST shall be dealt with under Statutory Variation Clause.

Unit/division may follow the procedure as mentioned below while dealing with contractor's payment, post GST promulgation:

- a. **Works is treated as a 'Service'**. (- GST rate would vary depending on type of work). All works contracts are to be provided with Harmonized System of Nomenclature - HNS Code (actually Service Accounting Code SAC, being a service). The HNS code can be downloaded from the website www.cbec.gov.in. Works Contracts in general come under Chapter 99, Section 5, Heading 9954(Construction Services) as 'Composite supply of Works contract as defined in clause 119 of section 2 of CGST Act'. GST rate would be based on the type of contract. In case contract consists of both goods & service, then interpretation regarding nature of contract should be done as per clause 8, Chapter III of CGST Act, 2017.
- b. The 'on account/ final contract certificate' shall be prepared by the unit/division on the basis of quantity of work executed at the contracted rates, duly segregating the GST component as detailed in para (c) below.
- c. Since before promulgation of GST, the contracted rates normally used to be inclusive of all taxes, the calculation of 'Gross amount of work executed', 'Amount of work executed excluding GST amount' and 'GST amount' in the 'on account / final contract certificate' may be done as under:
Let Z = Gross amount of work executed on the basis of quantum of work executed at the contracted rates.
 R = Percentage rate of GST for that HSN code
 Y = GST amount as per applicable GST rate for that HSN code.
 X - Amount of work executed excluding GST amount.

Then, $Z = X + Y$;

Where $Y = X \cdot R / 100$

Thus from the known amount of Z, amounts of X and Y can be worked out.

- d. Once the 'on account/final contract certificate' is prepared by unit/division and communicated to contractor, the contractor shall submit invoice (bill) in a GST compliant format duly segregating the 'Amount of work executed excluding GST amount' and 'GST amount' (i.e. "X" & "Y" as mentioned in para (c) above) along with Invoice No. (Bill No.) and all other details required under GST act. In case any need arises to modify the Invoice (Bill) due to any reason, contractor shall submit amended fresh invoice for processing the payment.
 - e. In case contractor is liable to be registered under GST Act, unit/division shall pay to the Contractor 'Gross amount of work executed' (i.e. "Z" as mentioned in para (c) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Contractor shall be liable to pay 'GST amount' to respective authority himself. Whereas, unit/division shall deposit all other taxes deducted to concerned authority as is being done presently.
 - f. In case contractor is not liable to be registered under GST Act, contractor shall be paid "Amount of work executed excluding GST amount" (i.e. "X" as mentioned in para (c) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Ministry/ Department shall deposit 'GST amount' as well as all other taxes deducted to concerned authority.
- ii. Pre-GST contracts need to be viewed in the light of the clauses of the contracts already signed and provision for change in law.

5. Evaluation of Bids and Award of Work

5.1. Evaluation of Bids

The evaluation of Bids is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified or not stated in the contract, with the exception of provisions of laws in force. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of unit/division. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. The process of tender evaluation proceeds is described in the subsequent paras.

5.2. Schedule of Procurement Powers (SoPP)/Delegation of Power (DOP)

There are delegations up to a low threshold value below which the evaluation of the bids and decision for award of contract may be entrusted directly (instead on a recommendation of a Tender Committee) to individual competent authority. He would himself carry out all the steps in evaluation described below, instead of the TC and directly record reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is carried out by Tender Committee consisting of three or more members with requisite experience and competence. Members include a Financial Adviser or his representative and a representative of the user as per DOP. Experts may also be called in to assist the TC. TC should not be very large as it may slow down the evaluation process. There is no need to constitute any other committee for technical evaluation, preliminary evaluation etc. The representative of user Department will work as a convener of the TC. Such an arrangement ensures checks & balances in the Tender Evaluation Process. Competent authority, in direct acceptance case; and members of the Tender Committee will receive the bids opened along with other documents from the procuring officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement. A model DOP is attached in Appendix-1 for guidance.

5.3. Preparation of Comparative Statement and Briefing Note

The unit/division should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc The comparative statement so prepared should be signed by the concerned officers and vetted by the TC members and designated Head of Finance & Accounts (HFA) of the Unit/Division for veracity of information upon placing it to the Competent Authority for approval. It is also a good practice, to prepare a briefing note by the concerned Officers for guidance of TC members, before first TC meeting is held. The briefing note should also be vetted by Finance.

5.4. Preliminary Examination

i. Confidentiality of Process

- a. Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other person not officially concerned with such a process until the award to the successful bidder has been announced.
- b. From the time of bid opening to the time of contract award, no bidder shall contact the unit/division on any matter related to the bid, except on request and prior written permission.
- c. Any effort by the bidder to influence the unit/division in bid evaluation, bid comparison or contract award decisions will vitiate the process and will result in the rejection of the bidder's bid. Such conditions, incurring in (a) & (b) above shall be embedded in the Instructions to Bidders (ITB).

ii. **Unresponsive Tenders:** Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive (both during Techno-commercial evaluation and Financial Evaluation in case of Two Envelope bidding) and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Unresponsive offers may not subsequently be made responsive by correction or withdrawal of the non-conforming stipulation. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- a. The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- b. The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- c. The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be an enlisted contractor but the tenderer is not an enlisted contractor);
- d. The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- e. Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the unit/division's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

iii. **Minor Infirmary/ Irregularity/ Non-conformity:** During the preliminary examination, some minor infirmity and/ or irregularity and/ or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/ speed post/e-mail, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform unit/division's

view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

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

5.5. Evaluation of Responsive Bids

In case of single stage single envelope bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder (the lowest evaluated, substantially responsive, technically-suitable bid from eligible and qualified bidder) among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EOI stage would have already been evaluated as detailed in Chapter 3 and this second stage is for evaluation of responses to the Second Stage multiple envelopes from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

- i. **Evaluation of Techno-commercial Bid:** In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, technical and commercial conditions to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelope, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.
 - a. **Evaluation of eligibility/ qualification Criteria:** Unit/division will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all

of unit/division's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/ his tender as well as such other allied information as deemed appropriate by unit/division.

- b. **Evaluation of Technical Suitability:** The description, specifications, drawings & other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/reject or modify the evaluation contained in such a report/ evaluation. The tender document should clearly state whether alternative offers/makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and unit/division.
 - c. **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/ allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and unit/division.
 - d. **Considering Minor Deviations:** Bids which are not materially deviated, may be considered substantially responsive. Court has consistently taken a view that unit/division is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:
 - 1. Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
 - 2. Limits, in any substantial way, inconsistent with the tendering documents, the unit/division's rights or the tenderer's obligations under the contract; or
 - 3. If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.
 - 4. Declaration of Technically Compliant Bidders: If it is a multiple envelope tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 5) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelope/ cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.
- ii. **Right of Bidder to question rejection at Techno-commercial Stage:** A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the

unit/division in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 5.7below.

iii. **Evaluation of Financial Bids and Ranking of Tenders**

- a. **Unresponsive Tenders:** Unresponsive tenders may again be identified after Financial Bid opening, as in case of Technical Bid opening. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive.
- b. **Non-conformities between Figures and Words:** Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-procurement. This should be taken care by defining the treatment of bids in the tender documents in the manner indicated below:
 1. If, in the price structure quoted for the requirements, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity, or the total price is not worked out by bidder), the unit price shall prevail and the total price corrected accordingly;
 2. If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
 3. If there is a discrepancy between words and figures, the amount in words shall prevail.
 4. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to unit/division's observation, the tender is liable to be rejected.
- c. **Correction of Bids:** Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited. The arithmetical corrections will be done by the representatives of the Unit Finance Dept. and TC.
- d. **Financial Evaluation:** All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder - the lowest evaluated, substantially responsive, bid which meets the eligibility/qualification criteria and techno-commercial aspects.

5.6. Deliberations by the Tender Committee

i. Timely Processing of Tenders

- a. Delays in finalising procurement deprive the company of the intended benefits and results in lost revenues and cost over-run. Currently, the unit/divisions are generally awarding the contracts in 60 days from the date of tender opening for which the unit/division are asking for a validity of offer by the contractors for 60 days. In order to further shorten the period for award of contract, the unit/division should try to shorten the procurement decision period to 45 days from the date of opening of the tenders in most of the cases. Only in exceptional cases, like two packet/two stage bidding the period may be extended. However, in no case this time period should exceed 60 days. The unit/division may draw guidance from the arrangements made by CPWD, where the validity of tenders has been fixed in the following manner:

Table: Maximum days for award of contract by CPWD

Limit of procurement (in INR crore)	Maximum days for decision for award of contract
0.06	10 days
1.00	15 days
10.00	30 days
30.00	45 days
More than 30.00	60 days

Complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded.

- b. It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Committee (TC), wherever in place, are not meeting frequently. In order to ensure that most of the tenders are decided as per the new timelines as indicated in para above, (to be formally fixed individually by the concerned unit/division), it has been decided that the unit/division may notify at least one day of every week for the meeting of TC.
- ii. **Extension of Tender Validity Period:** The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

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

Reasons for seeking extension of bid validity should be recorded by the procuring officers.

- iii. **Reasonableness of Prices:** In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. The comparison maybe made with the following:
- a. Budgetary quotes from the potential vendors/bidders, ideally attempt should be made to get quotes from three (03) different potential vendors/bidders. If budgetary quotes are received from more than one (01) potential vendors/bidders, then the estimate should be framed on the average of the quotes received.
 - b. Estimated rate/rate considered in the Cost Estimation Sheet at the time of taking the Order from the client;
 - c. Last purchase price of this or similar nature of work may be updated taking into consideration inflation during the interim period and geographical condition etc.;
 - d. Costing analysis based on costs of various components/raw materials of the item;
 - e. Through the internal or external expert costing agencies or market survey; and
 - f. As a last resort, rough assessment from the opportunity cost of not using this work at all;
- iv. **Consideration of Abnormally Low Bids:** An Abnormally Low Bid is one in which the bid price, in combination with other elements of the bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Unit/division may in such cases seek written clarifications from the Bidder, including detailed price analyses of its bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, unit/division determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the unit/division may reject the bid/proposal. However, it would not be advisable to fix a normative percentage below the estimated cost, which would automatically be considered as an abnormally low bid.

As a safeguard, it should be closely monitored that final payments in such cases do not abnormally increases due to extra items. Further, there is no abnormal increase in quantities of the item for which contractors have initially quoted very high rates.

- v. **Cartel Formation/ Pool Rates:** It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to "appreciable adverse effect on competition" have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves enlisted for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/slicing of the work may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

vi. **Negotiations**

- a. Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:
 1. Where the procurement is done on nomination basis;
 2. Procurement is from single or limited sources;
 3. Procurements where there is suspicion of cartel formation which should be recorded; and
 4. Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done.
- b. The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
- c. Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
- d. After the CA or TC has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 1. Negotiations must be carried out by the CA or TC only;
 2. It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 3. The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 6, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
 4. A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure 6; and
 5. Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 7. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

vii. **Consideration of Lack of Competition:** Sometimes, against advertised/limited tender cases, the unit/division may not receive a sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as ‘Single Offer’. As per Rule 21 of DFPR (explanation sub-para), such situation of ‘Single Offer’ is to be treated as Single Tender. The contract may be placed on the ‘Single Offer’ bidder provided the quoted price is reasonable. However, restricted powers of single tender mode of procurement would apply. Before retendering, the unit/division should first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice to routinely assume that open tenders which result in single bids are not acceptable and to go for retender 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. 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 may be considered valid provided following conditions are satisfied:

- a. The procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- b. The qualification criteria were not unduly restrictive; and
- c. Prices are reasonable in comparison to market values

However restricted powers of single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable. Unsolicited offers against LTEs should be ignored.

viii. **Rejection of All Bids/ Re-tender**

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

1. If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
2. when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
3. none of the technical Proposals meets the minimum technical qualifying score;
4. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
5. the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
6. In case, the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required

or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the unit/division shall re-tender the case.

b. Approval for re-tendering should be accorded by the CA after recording the reasons/proper justification in writing. The unit/division should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses. The decision of the unit/division to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before re-tendering, the unit/division is first to analyse the reasons leading to re-tender and check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical & commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

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

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

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views. However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the tender accepting authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

x. **Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids:** All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest in the form of any liaison or relationship with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. All TC members should sign a declaration at the end of their reports/noting stating that, *"I declare that I have no conflict of interest with any of the bidder in this tender"*. TC members may make such a declaration at the end of their reports. GFR 2017 [Rule 173 (xxii)] mandates that in case a Tender Committee is constituted

to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee, to ensure independent expression of views.

- xi. **Tender Committee Recommendations/ Report:** The TC has to make formal recommendations (Annexure 5) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the contractor in his bid are not left un-deliberated and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the contractor. These recommendations are submitted for approval to the tender accepting authority. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:
- a. Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
 - b. He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
 - c. The price of the offer is reasonable and consistent with the quality required; and
 - d. The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

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

5.7. Award of Work

- i. **Letter (Notification) of Award (LOA)/Purchase Order (PO) to Successful Bidder:** Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter/e-mail or any other acknowledgeable and fool proof method that his bid has been accepted. Legally acceptance of offer is considered once the acknowledgement is received from the successful bidder. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period [generally 14 days].

Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

- ii. **Publication of Tender Results and Return of EMD of Unsuccessful Bidders:** Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 days of notice of award of contract. The successful contractor's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

In cases, where unit/division compete with private firms, publication of details of contracts awarded by the unit/division concerned to various sub-vendors, suppliers, technology providers

and other associates before firming up their offer, may hurt the interest of the unit/division as the competitors may get to know the details of sub-vendors, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

- iii. **Bidder's right to question rejection:** A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. The unit/division should ensure a decision within 07 days of the receipt of the representation. Only a directly affected bidder can represent in this regard:
- a. Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder enlistment or bidding, as the case may be, can make such representation
 - b. In case pre-qualification bid has been evaluated before the bidding of technical/ financial bids, an application for review in relation to the technical/financial bid may be filed only by a bidder has qualified in pre-qualification bid;
 - c. In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:

1. Determination of the need for procurement;
 2. Selection of the mode of procurement or bidding system;
 3. Choice of selection procedure;
 4. Provisions limiting participation of bidders in the procurement process;
 5. The decision to enter into negotiations with the L1 bidder;
 6. Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;
 7. Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/ contractor; and
 8. Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.
- iv. **Performance Security:** The contractor receiving the LOA/PO is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the contractor.
- v. **Acknowledgement of Contract by Successful Bidder and Execution:** After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties. The contractor should acknowledge and unconditionally accept, sign, date and return the agreement within 14 days from the date of issue of the contract in case of OTE and 21 days in case of GTE. Such acknowledgements may not be required in low value contracts, below INR 1 lakh or when the bidders offer has been accepted in entirety, without any modifications. If both parties (unit/division & the contractor) simultaneously

sign the contract across the table, further acknowledgement from the contractor is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

vi. **Framing of Contract:** The following general principles should be observed while entering into contracts:

- a. Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Unit/Corporate 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 Unit/Corporate Finance.
- b. All contracts shall contain a provision for
 1. Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
 2. 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;
 3. All contracts for supply of goods should reserve the right of the unit/division to reject goods which do not conform to the specifications;
 4. Payment of all applicable taxes by the contractor; and
 5. When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the unit/division at any time on the expiry of six months' notice to that effect.
 6. How the appointed day or day of starting of the work shall be determined.

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

6. Execution and Monitoring of Works and Quality Assurance

6.1. Execution and Monitoring of Work

No work shall be commenced unless the conditions precedent as laid down in Para 1.8 (xi) have been fulfilled.

- i. A competent Project Management Team shall be set up including training on Project Management to the team, if required.
- ii. **Monitoring System:** A system of project monitoring for each work shall be prepared before start of the work and same shall be available at site of work. 'Deadlines' or 'contractual milestones' should be set up and tabulated to facilitate monitoring of the progress of work. The work shall be monitored quarterly/monthly basis by the Unit Head and if required, a status report should be submitted to the Functional Director.

All complex assignments require the use of proper project management tools that enable the Project Management Team (Engineer, member of Finance Dept, Project Manager, etc.) to collaboratively monitor the actual; physical and financial progress of the contract against the planned physical and financial schedule. The contract may also specify that the contractor engage certified project management professionals to train and monitor project progress.

- iii. **Fulfilling the Conditions Precedent to Land Acquisition and Other Clearances and Permits:** The process of site clearance shall be started by the unit/division, well ahead and completed entirely, or at least substantially, by the time the contract is awarded. If required, the unit/division shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. The unit/division has to be aware that any delay in fulfilling the conditions precedent stipulated in the contract will attract delay claims from the contractor, besides causing time and cost overruns. Hence, all or most conditions precedent shall be fulfilled before award of the LoA. The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals.
- iv. **Commencement of Work:** After signing the contract and issue of LoA/PO, the engineer should instruct the contractor to 'commence the works', only after all the above mentioned land availability, clearances and permits have been obtained. The contractor, within the stipulated time, should submit to the engineer for his consent: (i) the work programme in such form and detail as the engineer reasonably prescribes; (ii) methods statement which the contractor proposes to adopt for execution of the works; and (iii) the quality assurance plan. The unit/division should on being satisfied with Contractor's submission provide to the contractor total or partial possession of the site.
- v. **Approval of Quarries and Borrow Areas and Materials:** The contractor will obtain approval of the engineer for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the engineer to comply with the requirements of specifications.
- vi. **Sub-contracting:** 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 unit/division, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting will generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting. The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25%). Sub-contracting by the contractor without the approval of the unit/division shall be a breach of contract, unless explicitly permitted in the contract.

- vii. **Safety at Work Site:** The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site. He must follow the laws, codes and standards laid down in this regard. The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs. Special precautions must be used if hazardous chemicals are used or stored at workplace. Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, falling objects, crane falling/ overturning and damage to building from vibrations/cave-ins from construction activities. Engineer must ensure that contractor does not adopt any short-cut in this regard. Most large contracts have a well-defined Safety Health & Environment (SHE) guidelines embedded in the agreement. Appointment of site safety engineer by the contractor is a mandatory requirement in such cases. The engineer shall engage safety experts to carry out frequent SHE audits and mandate correct measures.
- viii. **Progress Reporting & Review:** There should be a stipulation in the contract for large value works (magnitude to be specified), for the contractor to submit project specific monthly progress report of the work in a computerized form (MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:
- a. Project information, giving the broad features of the contract.
 - b. Introduction, giving a brief scope of the work under the contract and the broad structural or other details.
 - c. Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
 - d. Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
 - e. Plant and machinery statement, indicating those deployed in the work, and their working status.
 - f. Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.
 - g. Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
 - h. A statement showing the extra and substituted items submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken by the contractor, if any, the advances received and adjusted from the department, etc.
 - i. Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.

- j. Quality assurance and quality control tests conducted during the month, with the results thereof.
- k. Any hold-up shall be specified.
- l. Dispute, if any, shall also be highlighted.
- m. Monthly or fortnightly progress review by project team of unit/division with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

6.2. Quality Assurance

- i. In order to control the quality of work, a Quality Assurance Cell shall be formed in every work centre comprising of multi-disciplinary professionals/engineers to cover all types of works, such as civil, mechanical, electrical etc.
- ii. In case of non-availability of qualified professionals/engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

6.3. Design Approvals

In case of EPC contracts approval of the designs should be taken from the appropriate authority, as may be defined in the tender document, to ensure that the performance level is met by the design.

6.4. Time Monitoring

- i. **Time at Large:** When the unit/division does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits his right to such remedies. Under such circumstances time is said to become at large and the contractor gets freed from his obligation to complete within the specified time. To avoid such a situation, before the expiry of originally stipulated date of completion, the unit/division should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.
- ii. **Force Majeure (FM) Clause:** Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM). Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence. Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. However, if such event continues for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.
- iii. **Delays in Execution**
 - a. A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the unit/division or the tenderer and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the unit/division or the engineer, or other causes. Such delays

expose the non-performing party to various sanctions under the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorise the delays as follows:

1. **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, and so on, applies;
 2. **Compensable delays** – or Compensation Events, which put full burden of responsibility on the unit/division as covered in the GCC; and
 3. **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.
 4. **Concurrent delays** - when two or more events responsible for delay overlap each other. The delays may be attributable to the unit/division or the contractor or none, and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The unit/division should see that the concurrent delays do not result in unnecessary extra extension of time.
- b. Once the delay is categorised, it should then be determined not only whether the contractor is eligible for time extension and/or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.
- iv. **Liquidated Damages and Incentives/ Bonus:** Normally, tenders shall be invited with reference to a pre-determined period of completion of works. Provision of incentives for completion of work before schedule should be sparingly made after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms.

Incentives/Bonus (e.g. 1% of the contract value per month subject to a maximum of 5% of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously. To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Engineer (Engineer herein refers to unit/division to which work has been entrusted under Rule 133 of GFR 2017). The Engineer shall report the actual date of completion of the works as soon as possible through fax or email so that the report is received within seven days of such completion by the concerned CA.

In case of delay in completion of the contract, liquidated damages (for repair works costing up to Rs. 10 Lakh – 1% of the contract value per week and for all other works 0.5% of the contract value per week of delay subject to a maximum of 10% of contract value or as implied the client) should be levied. The penalties proposed for identified lapses of omission or commission must be disclosed in the tender documents in clear monetary terms.

v. **Extension of Time (EOT)**

- a. Extension of Time (EOT) must not be left to the end; it should be dealt with promptly during the progress of the contract and for ongoing critical delay interim EOT may be awarded. The engineer shall, after due consultation with the contractor, determine the length of such extension and notify the contractor accordingly. After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.

- b. If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC. The Engineer will assess whether and by how much the intended completion date shall be extended.
- c. Unit/division 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 competent to finalise the particular tender.

6.5. Financial Monitoring

Besides administering the contract with regard to its quality and completion, the project team will regularly assess the financial position and exercise financial control. He will update, on a quarterly basis, cash flow projections, cost estimates and yearly/quarterly milestones, and submit them to the unit/division. Variations should take place with a view to achieving economical completion of the work, and not to result in avoidable higher rates or costs. In case of a significant number of variation orders or unexpectedly rapid cost escalation, updation may be done more frequently. The financial statements should bring out comparisons of the initial estimated/tendered cost with the actual cost - component- and activity --wise -- both with respect of quantities and value. The unit/division should examine these statements critically. If costs are likely to be exceeded, this should be anticipated, and a revised estimate of cost prepared, with complete explanations, for approval by the CA.

i. Variations/ Extra/ Substituted Items

- a. **Variation means:** (a) increase or decrease in the quantity of any work included in the BOQ of the contract; (b) omission of any such work (but not if the omitted work is to be carried out by the procuring entity by another contractor); (c) change in the character or quality or kind of any such work; (d) change in the levels, lines, position and dimensions of any part of the works; (e) additional work of any kind necessary for the completion of the works; and (f) change of the specified sequence or timing of construction of any part of the works. The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/character and purpose of the original contract. The variation may result in additional or reduced payments to the contractor or there may be no price change at all. It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimise any adverse effect on the overall works. Before a variation can be instructed by the Engineer to the contractor, prior approval from the unit/division is needed, except for certain situations as may be specified in SCC. The rate/price/valuation do not have to be agreed with the contractor, although this is preferable. Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval. In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and engineer and reported to the unit/division for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.
- b. **Keeping Track of Variations/Extra/Substituted Items:** The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor has a tendency to report and claim positive variations (variations causing higher payments) and may not report

negative variations. However, the engineer and unit/division must keep track of such negative variations and issue timely letters. This shall cover the following important steps:

1. The unit/division's prior approval of the issue of the variation instruction;
2. The engineer's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/administered in a separate register;
3. The variation instruction letter must be given a unique variation number and details entered into the variation register;
4. The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and
5. The financial implications are kept up to date.

c. Valuation of Variations: While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g. project delays, cost escalations, loss of transparency etc. Variation instructions for modified, new or additional work involving extra cost shall be valued as per the procedure set out in the relevant clauses of the contract. The following are the steps to be taken by the Engineer:

1. To form an opinion as to the applicability of the rates in BOQ and if considered applicable, to use BOQ rates;
2. If not considered applicable, to use BOQ rates as the basis for valuation;
3. In the event of a disagreement, to consult with unit/division and contractor to try and agree on suitable rates; this means developing new rates from first principles;
4. If there is disagreement, to fix the appropriate rate; and
5. To determine provisional rates to allow monthly certification.

In making his recommendations, the engineer should give the contractor the opportunity to state his case and, if he considers the BOQ rate to be inappropriate, to present his proposals as to how the rate should be adjusted or what basis should be used to assess a new price. For his part, the contractor must support his submission with full particulars including, where applicable, a detailed cost breakdown of any rate in BOQ. The unit/division should ensure that the above procedure has been duly followed and appropriately explained by the engineer in his recommendations, before he approves the variation. Where it is reasonable to value at the BOQ rate or some modification of it, any stance by the contractor that the tendered price may be 'wrong' or deliberately set low is irrelevant. The threshold level of the value/quantity of a varied item below which a variation will not merit re-fixation of rate or price should be specified in the SBD.

In case the engineer, while doing valuation of variations, notices significant cost and time over-runs due to deviations between actual ground situation and the situation recorded in DPR, he must bring to unit/division's notice the reach-wise differences and unit/division may consider stringent action against the consultant who has prepared such DPRs as per para 2.4 (ii).

ii. Measurement and Payment

- a. Measurements of all items having financial value shall be recorded in Measurement books (MB) and/or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. Electronic Management Books (e-MBs): the company as early as possible implement e-MBs and same should be integrated with IT based project monitoring system.
- b. Interim Payments: At a prearranged date each month, the contractor will submit a statement in such a form as the engineer from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The engineer would issue an Interim Payment Certificate (IPC) after following checks:
 1. Quantity of work actually completed as of an agreed 'cut-off' date;
 2. Reconciliation with Field measurements of quantities of work completed or claimed;
 3. Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
 4. Review of claims for extra work;
 5. Checking of retention amount and other recoveries;
 6. Review of variations - whether these have been approved by Procuring Entity. If not, provisional rates are to be used until final valuation sanctioned by Procuring Entity; and
 7. Price adjustments;
 8. Following the bills filed by the contractor, Interim monthly payments (net of: (i) retentions and recovery of advances; and (ii) statutory deductions (works tax, income tax, others) would be made based on IPC. The engineer will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of IPC, if any, specified in the contract.
- c. As cash flow is a critical requirement in a project, payments delays impact the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carry cost. The balance is to be released after the claims are scrutinised in detail as per procedure. If required an enabling provision may be incorporated in the Conditions of Contract, possibly with stringent penalties in case of misuse of this provision.
- d. Final bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of final certificate of completion furnished by the unit/division. Payment shall then be made after verification of the bill on the personal certificate of the officer-in-charge of execution of the work in the format given below:

"I..... Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry."
- e. **Delay in payment to the contractors: Payment to be made to the contractor as per the payment schedule of the client.**
 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. 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.

2. In case of unwarranted discretionary delays in payments, including failure to authorise/ make ad hoc payment as prescribed above, responsibility shall be fixed on the concerned officers. Project Management team should have a system to monitor delays in payments and to identify such unwarranted delays.
3. The final bill should also be paid to the contractor within three months after completion of work.
4. All project Management team implementing works contracts involving aggregate payments of more than INR 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.)

Note: the above instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors of AYCL.

iii. **Mobilisation Advance**

- a. If considered justified in certain specialized and capital intensive works, Contract may provide for an interest-bearing mobilisation advance to be paid to the contractor exclusively for the costs of mobilisation at 10% of the contract price on the provision by the contractor of an unconditional BG. Such BGs shall remain effective until the advance payment has been fully repaid, but the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.
- b. The aforesaid advance of 10% may be paid in two instalments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG in respect of the advance. The second instalment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10% of the contract price, as also provision of a BG by the contractor for this part of the advance. Mobilisation expenditure mentioned herein shall not include the margin money and bank commission, and so on, paid by the contractor for procurement of BGs against performance security and mobilisation advance.
- c. Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Organisation to take decision for grant of the mobilisation advance, whether interest free or interest bearing.
- d. If the Management feels it necessity in specific cases then it should be clearly stipulated in the tender document and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.

- e. Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.
 - f. There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
 - g. The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
 - h. Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
 - i. In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.
 - j. Utilization certificate from the contractor for the mob advance should be obtained. Preferably, mob adv should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.
- iv. **Plant, Machinery and shuttering Material Advance:** Another interest-bearing advance of 5% of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so provided in the Bid Documents and so requested by the contractor. The advance should normally not be more than 50% of the depreciated cost of such plants and machinery should be hypothecated to the Govt., before the payment of advance is released. This advance shall be subject to the following conditions: (i) the contractor shall produce satisfactory proof of payment; (ii) such equipment is considered necessary by the engineer for the works; (iii) the equipment has been verified to have been brought to site; (iv) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and (v) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.

The rate of interest shall be stipulated in the bid documents (say 10% per annum) or as may be notified by the Client from time to time.

The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/interim payment). The time of commencement of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.

All advances shall be used by the contractor exclusively for mobilisation expenditure, including the acquisition of construction-related plant and equipment. Should the contractor misappropriate any portion of the advance, it shall become due and payable immediately, and no further advance will be made to the contractor thereafter. In such cases, the contractor shall also be liable for appropriate action under the contract.

- v. **Secured Advance against Material brought to Site:** Secured advance on the security of materials (which are not combustible, fragile or perishable in nature) brought to the site but not yet incorporated in the works will be made up to 75% of invoice value, or the 75% of the corresponding value of the materials determined on the basis of BOQ rates, whichever is less, subject to the condition that their quantities are not excessive and shall be used within a period of 90 days and subject to other stipulations in the contract. The contractor will be required to sign an indenture bond, hypothecating the goods to the unit/division, and also be responsible for their safe custody. Before the advance is released, the unit/division may inspect the site to ensure that the Contractor has safeguarded the materials against pilferage and deterioration. It may be ensured that the contractor has not taken any loan/ limit from banks against hypothecation of the materials against which the secured advance is claimed. An undertaking in this regard may also be taken from the contractor.

Generally, as per the provisions of the contracts, the contractors are required to submit proof of cost of materials and the delivery of material at site while claiming such advances. The stock register should be maintained from the commencement of the contract and, unless otherwise prescribed in the contracts, the stock, so considered for advance, should generally be only paid stock (and not brought on credit). Where the materials are supplied from a captive source of the contractor, the reasonableness of the valuation of such materials may be ensured.

The advance will be repaid from each succeeding running bill (periodic/interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works. In all cases, the repayment of the advance will be affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.

- vi. **Price Variation:** This will deal with rise and fall of the prices in construction materials/labour and other key inputs. However, this shall not be applicable in the contracts where period of completion is eighteen (18) months or less. The provision of price variation clauses enables contractors to factor this reduced risk and quote more competitive prices.

The amount payable to the contractor shall be adjusted in respect of the rise or fall in the cost of labour, Petroleum, Oils and Lubricants (POL) and materials to the work for which appropriate formulae shall be prescribed in the contract and shall form part of the tender document.

To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingencies of such uncovered portion of rise or fall of costs.

The formulae may be based on weightages of the material/labour/POL and cost indices/base prices. Indices shall be appropriate for their purpose and shall relate to the contractor's proposed source of supply of inputs on the basis of which his contract price shall have been computed.

If any statutory regulations or bye-laws come into force after submission of the bids, which cause additional or reduced cost to the contractor in the execution of the contract, such statutory additional or reduced cost (except which are covered in cost indices) shall be added or deducted from the contract price.

Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value works – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

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

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

The following are important elements of PVC:

- a. The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;
- b. The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible;
- c. The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d. Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e. Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f. No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;

- g. Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h. Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i. The clause should also contain the mode and terms of payment of the price variation admissible; and
- j. The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k. Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:
“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”
- l. Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.6. Commissioning and Documentation

- i. When the work has been executed, the assets created shall be commissioned. Reasonable advance information of completion of work should be given to the concerned unit/division or the client to enable them to make arrangements for taking over. The unit/division or the client may carry out detailed inspection of the commissioned project to ensure that no deficiencies are there before taking over. “As built” drawings of the work shall be got prepared through the contractor or otherwise to facilitate proper maintenance of the assets, additions to the assets at subsequent dates etc. and to form part of the records of the unit/division or the client.
- ii. The Contractor would be responsible for obtaining Completion/ Occupancy Certificates/ Clearances and No-Objection-Certificates (NOCs), if applicable, from the local civic authorities. For completed Work and Facilities before handing over the same to unit/division or the client for putting them to functional use.
- iii. Before the completed work is taken over by the unit/division or the client, it must ensure that the Contractor restores to original status - the auxiliary services/facilities (Roads, Sewerage, utilities, including removal of garbage and debris) affected during the construction process.

- iv. The Contractor shall hand over to unit/division or the client concerned or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all agreed techno-functional requirements along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.
- v. On completion of the work, a Project Completion Report (PCR) shall be submitted by The Contractor duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts within one month of settlement of final bills of the contractors/ other agencies deployed on the work.
- vi. Record keeping should be created at every work centre to facilitate proper stacking of records pertaining to the completed works. The records should be preserved in such a manner that the same can be retrieved whenever required.

6.7. Closure of Contract

- i. **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 8. At least in large contracts (above INR 25 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:
 - ii. **Material and Works Reconciliation:** The unit/division should confirm that all Works ordered in the contract and paid for have been taken over in good condition and there is no shortcoming. Full reconciliation of all materials, machinery and assets provided to the contractor should be done including wastages and return of scrap/ off-cuts.
 - iii. **Reconciliation with the User Department:** Besides Works reconciliation, the user department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the department/client’s satisfaction, as per the contract:
 - a. Achievement of performance standards of Work;
 - b. Installation and commissioning, if any;
 - c. Support service during the Defect Liability Period which has ended on _____;
 - d. As Made Drawings;
 - e. Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.
 - iv. **Payment Reconciliation:** The unit/division may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:
 - a. LD;

- b. Price reduction enforced on account of shortfall in standards of Work;
- c. Variations/deviations from the scope of the contract;
- d. Overpayments/duplicate payments, if any;
- e. Services availed from unit/division or the client and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- f. Demurrage, insurance premiums or claims, and so on;
- g. Works reconciliation;
- h. Price variations;
- i. Statutory duties paid on behalf of the contractor by unit/division or the client;

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

6.8. Dispute Resolution Mechanism

- i. Normally, there should not be any scope for dispute between the unit/division and contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the unit/division and contractor. When a dispute/difference arise, both the unit/division and contractor should first try to resolve it amicably by mutual consultation failing which Dispute Resolution process should be invoked. The dispute resolution method shall be specified clearly in the bidding document. It may be through a Disputes Resolution Board, if mediation does not succeed then Arbitration under the Arbitration and Reconciliation Act is to be provided for.
- ii. If a dispute of any kind, whatsoever, arises between the unit/division and contractor in connection with or arising out of the contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after the repudiation or termination of the contract, including any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or valuation of the Engineer; the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board.
- iii. The Project Management Team may act as Dispute Resolution Board. The board may co-opt any other officer, if required for dispute resolution.

6.9. Conciliation

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 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.

6.10. Arbitration

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. All questions and disputes relating to the meaning of the specifications, design, drawings and

instructions here-in and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be referred to adjudication through arbitration.

It is therefore essential that the Project Department of the unit/division and Engineer be aware of potential arbitration clauses and ensure that crucial documentation including site records, quantity records, handover of site etc. are recorded and secured properly for future use.

i. **Arbitration and dispute resolution**

- a. 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.
- b. Arbitration /court awards should be critically reviewed. In cases where there is a decision against the Company, 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 Company.
- c. 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.
- d. 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 cost of funds. This results in huge financial losses to the Company. Hence, in aggregate, it is in company's 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 by the Government in this matter in the past, but have not been fully complied with.
- e. 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 Company.

ii. **Arbitration Awards**

- a. In cases where the unit/division 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 unit/division 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 unit/division should the subsequent court order require refund of the said amount.

Note: the above instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors of AYCL.

- b. 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 unit/division as mutually agreed/decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the unit/division may be allowed to be used by the contractor/concessionaire with the prior approval of the lead banker and the unit/division. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.

6.11. Breach of Contract, Remedies and Termination

- i. **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 unit/division 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 unit/division exceeds that due to the contractor, the difference will be a debt payable to the unit/division. The CA may terminate a contract in the following cases. The unit/division 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.

- ii. **Cancellation of Contract for Default:** 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:
 - a. has seriously or repeatedly breached the contract, including

1. failure to complete the work within the time period(s) specified in the contract, or any extension thereof granted;
 2. failure to obey instructions in relation to his progress or defective work, material or plant;
 3. breach of the prohibition against sub-contracting
 4. Failure to supply sufficient and suitable constructional plant, temporary works, labour and material as proposed in the work programme;
 5. 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
 6. Failure to comply with the requirements regarding JVs
- b. committed fraud
- c. If the contractor fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
- d. If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
1. Forfeiture of the performance security;
 2. 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;
 3. 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.

- iii. **Termination of Contract for Insolvency:** 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 unit/division.
- iv. **Termination of Contract for unit/division's Failure or Convenience:** After placement of the contract, there may be an unforeseen situation compelling unit/division 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 (unit/division's) convenience, inter alia, indicating the date with effect from which the termination will to become effective. This is not unit/division'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 to be incorporated in the tender document as well as in the resultant contract. If termination occurs because of unit/division'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.

6.12. Preparation of Revised Project Report

For project costing INR 100 crore or above the unit/division will set up a Review Committee consisting of a representative each from the Functional Director, Unit Head, Corp./ Unit Finance Head and the Project Executing team to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than INR 100 crore, it will be at the discretion of the Functional Director to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.

Any increase in costs due to statutory levies, exchange rate variation, price escalation within the approved time cycle and/ or increase in costs upto 20% due to any other reason, are covered by the approval of the original cost estimates. Any increase in this regard would be approved by the Head of the Company with the concurrence of the Director (Finance).

Any increase in costs beyond 20% of the firmed-up cost estimates due to time overrun, change in scope, under-estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation within the approved time cycle) should first be placed before the Committee of Directors to identify the specific reasons behind such increase, identify lapses, if any, and suggest remedial measures for the same.

When the variation/ excess occurs at such an advanced period in the construction of a work as to render the submission of a revised estimate purposeless, the completion report may explain the excess and an Officer of status not lower than that of Manager may pass the completion report, if the total expenditure in question is not greater than that which he is empowered to sanction in the case of a revised estimate.

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;
- iii. Development of new sources and registration/enlistment of contractors.

7.2. Code of Integrity for Public Procurement (CIPP)

- i. **Introduction:** Procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of unit/division involved in procurement and the bidders/contractors must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Preparation of Estimates). The bidders/contractors should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement (including sub- contractors engaged by them) in enlistment applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of enlisted contractors, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.
- ii. **Code of Integrity for Public Procurement:** Procuring authorities as well as bidders, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:
 - a. **“Corrupt practice”:** making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
 - b. **“Fraudulent practice”:** any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
 - c. **“Anti-competitive practice”:** any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the unit/division, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
 - d. **“Coercive practice”:** harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
 - e. **“Conflict of interest”:** participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of unit/division who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the unit/division with an intent to gain unfair advantage in the procurement process or for personal gain; and

- f. **“Obstructive practice”**: materially impede the unit/division’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the procuring entity’s rights of audit or access to information;

iii. **Obligations for Proactive Disclosures**

- a. Procuring authorities as well as bidders, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declares any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b. Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other procuring entity. Failure to do so would amount to violation of this code of integrity.
- c. To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the unit/division. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder’s actions in the tender and subsequent contract.

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

- a. If his bids are under consideration in any procurement
 - 1. Forfeiture or encashment of bid security;
 - 2. calling off of any pre-contract negotiations; and
 - 3. rejection and exclusion of the bidder from the procurement process
- b. If a contract has already been awarded
 - 1. Cancellation of the relevant contract and recovery of compensation for loss incurred by the unit/division;
 - 2. Forfeiture or encashment of any other security or bond relating to the procurement;
 - 3. Recovery of payments including advance payments, if any, made by the unit/division along with interest thereon at the prevailing rate;
- c. Provisions in addition to above:
 - 1. Removal from the list of enlisted contractors and banning/ debarment of the bidder from participation in future procurements of the company for a period not less than one year;
 - 2. In case of anti-competitive practices, information for further processing may be filed with the Competition Commission of India;

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

7.3. Integrity Pact (IP)

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

Ministry of Finance, Department of Expenditure have mandated Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the company with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure. The present threshold value is INR 3.00 Crores. A sample IP format is enclosed in Annexure 1.

The pact essentially envisages an agreement between the prospective contractors/ bidders and the unit/division, committing the persons/ officials of both sides, not to resort to any corrupt practices in any aspect/ stage of the contract. Only those contractors/ bidders, who commit themselves to such a Pact with the unit/division, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- a. Promise on the part of the unit/division to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- b. Promise on the part of bidders not to offer any benefit to the employees of the unit/division not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- c. Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- d. Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price.
- e. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- f. Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary.
- g. Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti-corruption principle.
- h. Integrity Pact lays down the punitive actions for any violation.
- i. **IP would be implemented through a panel of Independent External Monitors (IEMs)**, appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. The company requires to select at most three persons (below the age of 70 years) of high integrity and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top

management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).

- j. **In tenders meeting the criteria of threshold value/nature of procurement** - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by unit/division's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).
- k. **Role/Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the unit/division, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the unit/division. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

7.4. Development of New Sources and Empanelment of Vendors/Suppliers

- a. Ensuring an up-to-date and current list of empanelled, capable and competent vendors/suppliers facilitates efficiency, economy and promotion of competition in procurement, especially where open tendering is not resorted to. The list may be referred to while floating a limited tender/local purchase/direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/duplication of records thereby saving time, especially in the case of emergency procurement. For goods and services not available on GeM, unit/division may also empanel suppliers of goods and services which are specifically required by them, periodically. Such empanelled suppliers should be boarded on GeM as and when the item or service gets listed on GeM. The list of empanelled suppliers for the subject matter of procurement be exhibited on websites of the AYCL.
- b. Unit/division should maintain a list of authorised empanelled dealers/vendors/suppliers of proprietary items where the supply is from limited sources. Such list would be prepared product-wise by the procuring department of the unit/division and put up to the Tender Committee (TC) who, after reviewing, will recommend to the concerned Divisional Head for approval. Once this list has been approved by the Divisional Head, this becomes a final list and shall remain valid for 3 years and be reviewed thereafter periodically for every 3 years. However, in the meanwhile, should the list require updating by inclusion of new suppliers or deletion as the case may be, this would be forwarded by TC for the approval of Divisional Head through Competent Authority (CA) /designated Head of Finance & Accounts (HFA) of the Division.
- c. The firms that are empanelled for supply of orders valued above INR five (05) lakh should invariably be manufacturers or their authorised agents. Unit/division shall register the manufacturers and not agents or middlemen. A sole selling agent/authorised agent could be considered for empanelment, subject to the approval of the Divisional Head duly recommended by the TC members of the unit/division, if it satisfies that he/she is the sole selling agent of manufacturers, and financial and technical capabilities of the manufacturers are ascertained by TC members of the unit/division. The availability of a suitable arrangement with the sole selling agent for after-sales service may also be ensured or legally binded by the procuring department and TC members of the unit/division.
- d. In order to build up/develop suppliers eligible for empanelment, advertisement through website should be made every 3 years, which would have to be updated for new suppliers/ fabricators/sub-contractors etc. The press advertisement should clearly state the various material requirements and the nature of the work/fabrication required by the respective units. The eligibility criteria shall also be clear with regard to technical, manufacturing and financial capabilities of bidders and the same shall be as specific as possible so that the possibility of unqualified tenderers can be minimized. The list of approved suppliers unit/division-wise with the additions made through Vendor development proposal shall be uploaded in company website and updated once in a year. For special jobs/contracts, the frequency of press tenders/insertion in website has been dealt with in this manual.
- e. The suppliers who have not applied in response to advertisement in website but have been found capable of supplying or being developed for supply/services of the requirements, may also be considered for the purpose of empanelment by the TC with due approval from Unit Head prior to the approval from CA/designated HFA and Divisional Head/ Functional Director.
- f. The form of Application for Empanelment (Annexure 2 as applicable) is to be issued to each of the prospective suppliers who shall reply to the website advertisement with all enclosures; those who have been found capable by the unit/division, such form filled up in all respect with all enclosures be sent along with the prescribed fee, if any, to the HFA & Divisional Head for scrutiny and approval.

The manufacturers / vendors, where appropriate, should state in all cases whether they have been registered with the GST authorities in order to avail of the benefit of GST credit. In case of empanelment through website, the prescribed fees are to be sent along with the Empanelment Form duly filled in. The prospective vendor who shall download the Empanelment Form from website shall deposit the prescribed fees along with the Empanelment Form, duly filled in.

- g. On receipt of the application for Empanelment Form which should be duly filled up in all respects, the purchase department along with Head of Quality Assurance (QA)/his nominated representative will arrange for inspection (where practicable) and will forward the same with their remarks to the TC for technical and financial vetting. The TC, after being satisfied will put the same to Unit Head and then CA/designated HFA and the Divisional Head for approval.
- h. For tea gardens, in the absence of TC, financial concurrence will be given by the Group Accountant (Assam/Dooars) after vetting from Garden Manager regarding the technical capabilities of the vendor and they will be finally approved by the General Manager in charge of operations / Chief Executive, Tea Division.
- i. Existing suppliers should be asked to fill up the application for empanelment and complete formalities, if not done earlier.
- j. Each supplier who have been qualified for supplying materials should be given a separate Regn. No. and details of the party should be entered in a register in the following format:
 - i. Regn. No. and date of Regn.
 - ii. Name, address and telephone No. (mobile & land line), e-mail address
 - iii. Status of the organization:
 - iv. MSMED Regn. No. & date (on verification of the relevant certificate) /NSIC Regn. No & Date where applicable
 - v. PAN No.
 - vi. Goods and Services Tax (GST) Regn. No.
 - vii. Excise Regn. No. (For items not covered under GST)
 - viii. VAT Regn. No. (For items not covered under GST)
 - ix. CST Regn. No. (For items not covered under GST)
- k. 'Remark' column: To record vendor rating – (Form QR10-09/other similar approved forms): where general performance of the vendor will be noted from time to time and/or deleted on the basis of their actual performance evaluation by the Purchase Department. The Purchase Department of the unit/division should update the position based on feedback from technical departments/user units (for example, Garden Managers in the case of Tea Estates or Manager (QA/ inspection/ testing) of the concerned Unit of Electrical & Engineering Divn. as to (i) quality, (ii) timely delivery, (iii) after sales services, (iv) response to emergency maintenance etc. Vendor rating should be considered the basis of awarding Purchase Orders/Contracts in future, provided that the suppliers should otherwise qualify the tender criteria.

This empanelment register should be maintained product-wise, keeping a separate section for each class of product procured. Registration No. will be allotted to each supplier. If any supplier is a supplier of more than one product the same registration no. will be used in respective product-wise groups.

This will also serve as a list of vendors (Form D10-01/ other similar approved forms) for limited tendering.

For Tea Division, names of suppliers applying for in response to the advertisement & not complying with other procedures as mentioned above & otherwise found suitable by all the Garden Managers, commercial & finance personnel from respective Group Office shall be maintained in a Register & shall constitute as the approved Vendor list for the group. All existing vendors/suppliers/Contractors shall be deemed to perform satisfactorily unless expressly stated otherwise. At the time of fresh empanelment only past performance of the parties shall be considered excluding Authorized Dealers/Stockists who are nominated by the manufacturers.

- I. Deletion of vendors - The name of any empanelled vendor may be deleted on any of the following grounds:
 - i. For failing to submit tender/quotation consecutively three times without sufficient reason
 - ii. For leaving the job incomplete
 - iii. For holding back, the company's material without proper justification and not executing the job in time
 - iv. For being debarred by the company
 - v. For being involved in any irregularity like misappropriation of Company's funds in or without collusion with any official of the Company
 - vi. Other than in situations of force majeure, after opening of financial bids, the supplier withdraws from the procurement process or after being declared as successful bidder: (i) withdraws from the process; (ii) fails to enter into a procurement contract; or (iii) fails to provide performance security or any other document or security required in terms of the bidding documents;

The Purchase Dept., if dissatisfied, will put up a recommendation to the TC who will carry out necessary examination and will place their recommendation to Divisional Head through Unit Head prior to CA/ designated HFA, for final action.

For Tea Gardens, deletion of names of Vendors shall be made as per the clauses mentioned in 3.6 (I) & shall be considered by all the garden Managers, finance & commercial personnel at Group Office who shall recommend for deletion of names to HOD of Tea Division.

- m. Debarment of the vendors/suppliers – If a situation arises where any empanelled vendors /suppliers/sub-contractor's performance appears to be detrimental to the interest of the company such as supply of spurious material, or poor quality material, wrong execution of orders with respect to specifications, deliberately withholding deliveries, passing of design & drawings or developed/existing component/sub- component to competitors/others etc. the TC will examine such cases on reference from Purchase Dept./other key officials and recommend to Divisional Head for debarment of sub-vendors under intimation to Chief Vigilance Officer/HOD Vigilance. The procedure for informing the other PSUs as per DPE / GFR 2017 guidelines will have to be complied with and this process (of debarment vendors/suppliers) is to be mentioned in Empanelment Form.

7.5. Debarment

- i. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':
 - a. *A bidder shall be debarred if he has been convicted of an offence-*
 1. *under the Prevention of Corruption Act, 1988; or*

2. *the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*
 - b. *A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*
 - c. *A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.*
 - d. *The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.*
- ii. Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

iii. Guidelines on Debarment of firms from Bidding:

- a. The guidelines are classified under following two types:-
 1. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
 2. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions:

- a. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- b. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 1. Whether the management is common;
 2. Majority interest in the management is held by the partners or directors of banned/suspended firm;
 3. Substantial or majority shares are owned by the banned/suspended firm and by virtue of this it has a controlling voice.
 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 5. All successor firms will also be considered as allied firms.

The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

b. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

1. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
 2. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
 3. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.
 4. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
 5. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 6. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/ Additional Secretary as competent authority to debar the firms.
 7. Ministry/Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 8. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 9. Debarment is an executive function and should not be allocated to Vigilance Department.
- c. It is possible that the firm may be debarred concurrently by more than one Ministry/Department. Ministries/Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para (b) as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

d. Debarment across All Ministries/ Departments

1. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

2. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.
3. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
4. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
5. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
6. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

e. Revocation of Orders:

1. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
2. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

f. Other Provisions (common to both types of debarment)

1. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
2. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
3. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
4. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
5. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
6. The period of debarment shall start from the date of issue of debarment order.
7. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
8. Ordinarily, the period of debarment should not be less than six months.
9. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the

circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

10. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

7.6. Project Management

- i. Poor management costs the company in terms of the following to build a project:
 - a. Additional expenditure burden due to increased costs, crowding out more deserving schemes and projects
 - b. Affect viability of projects due to increase in construction, causing losses to Company concerned
 - c. Economic burden, due to delayed return in investments
 - d. Imposes unnecessary economic burden on affected stakeholders
 - e. Creates a culture of acceptance of delay and avoidable costs – breeding more cases
 - f. Increased costs of procurement due to monetization of higher risks, perceived by contractors, of delays and scope creep associated with public funded projects.
- ii. Given the importance of project management in the final outcomes of projects, owner organizations/client which plan, fund and implement projects as well as construction firms contracted to build and/or manage projects need to adopt and institutionalize project management standards in their processes. A number of International Project Management Standards have been evolved by Governments as well as International bodies to assist organizations minimize cost and time overruns. While there are a variety of frameworks such as ISO-21500, PMBOK, PRINCE2, LOGFRAME, etc., most of them have a lot in common and have the following elements that need to be taken into account for effective management of projects. Some of these standards may be adopted by the company to improve processes and train project staff.
- iii. 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.
- iv. 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.
- v. 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.
- vi. Execution of the work shall primarily be the responsibility of the officials designed 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.

Note: the above instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from the Board of Directors of the company.

- vii. Project Management team 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.

Annexure 1: Integrity Pact

INTEGRITY PACT AGREEMENT

Andrew Yule & Company Limited (AYCL), having its Registered Office at "Yule House", 8 Dr. Rajendra Prasad Sarani, Kolkata 700001, hereinafter referred to as "**The Principal**".

And

..... having its Registered Office at.....here in after referred to as "**Bidder /Contractor /Supplier /Purchaser /Service Provider**".

Preamble

The Principal intends to award contract to Bidder/ Contractor/ Supplier/Purchaser/Service Provider under laid down organizational procedure, the contract for sale/ purchase of materials / goods as have been mentioned in the Purchase Order of the award and/or for obtaining service of whatever nature from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider etc. the principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and fairness/transparency in relation to the said award with the said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider.

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will during the tender process treat all **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** with equity and reason. The Principal will in particular, before and during the tender process, provide all necessary and appropriate technical, legal and administrative information related to the contract to all the said **Bidder/ Contractor/ Supplier/ Purchaser/ Service Providers** the same information and will not provide to **Bidder/ Contractor/ Supplier/ Purchaser/Service Provider any confidential / additional information through which the said Bidder/ Contractor/ Supplier/ Purchaser/Service Provider could obtain an unfair advantage in relation to the process or the contract execution.**
 - c. The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information relating to the conduct of any of its employees which is a criminal offence under the relevant anti-corruption laws in India or there be any substantive suspicion in this regard, the principal will inform its Chief Vigilance Officer/Vigilance Department and in addition can initiate disciplinary action.

Section 2: Commitments of the Bidder/ Contractor/ Supplier / Purchaser/ Service Provider.

1. The **Bidder/ Contractor/ Supplier/Purchaser/ Service Provider** commit to take all measures necessary to prevent corruption. It commits itself to observe the following principles during its participation in the tender process and during the contract execution.
 - a. **The said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider will not directly or through any other person or firm, offer, promises or give to any of the principal's employee involved in the tender process or during the execution of the contract or to any third person any materials or other benefit which he/she is not legally entitled to in order to obtain any advantage in exchange of any kind whatsoever during the tender process or during the execution of the contract.**
 - b. **The Bidder Contractor/ Supplier/ Purchaser/ Service Provider will not collude and enter into any undisclosed agreement or understanding whether formal or informal with any other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider to impair transparency and fairness. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bid any other action to restrict competitiveness or to introduce cartelization in the bidding process.**
 - c. The **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** will not commit any offence under the said relevant IPC/PC Act; further it will not use improperly, for the purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** will, when presenting its bid, disclose any and all payments it has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
2. The **Bidder / Contractor / Supplier/ Purchaser / Service Provider** will not instigate third party or persons to commit offences outlined above or be an attributory to such offences.

Section 3: Disqualification from Tender process and exclusion from future contracts.

- a. If the **Bidder/ Contractor/ Supplier/Purchaser/Service Provider** before awarding contract has committed a transgression through a violation of Section 2 or in any other form such as to put its/their reliability or credibility as **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** into question, the Principal is entitled to disqualify **the Bidder/ Contractor/ Supplier/ Purchaser/Service Provider** from the Tender process or to terminate the contract if already signed for such reason.
- b. If the **Bidder / Contractor / Supplier / Purchaser / Service Provider** has committed a transgression through a violation of Section 2 such as to put its/their reliability or credibility into question, the Principal is also entitled to exclude the said **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** from future contract awarding process. The imposition and duration of the exclusion will be determined by the severity of such transgression. The severity will be determined

by the circumstances of the cause in particular, the number of transgressions, the position of transgression within the company's hierarchy and the amount of damage. The exclusion will be imposed for a minimum period of 6 months and maximum of three years.

- c. The Bidder/Contractor/Supplier/Purchaser/Service Provider accept and undertake to respect and uphold the principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- d. If the Bidder/Contractor/Supplier/Purchaser/Service Provider can prove that it/they have restored/recouped the damages caused by him/them and has installed a suitable corruption prevention system, the Principal may revoke the exclusion pre-maturely subject to discretion.

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder/Contractor/ Supplier/Purchaser/Service Provider from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposited/Bid Security or 3% of the value of the offer whichever is higher.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider liquidated damages equivalent to 5% of the Contract value or the amount equivalent Performance Bank Guarantee.
3. **The Bidder / Contractor / Supplier / Purchaser / Service Provider agrees and undertakes to pay the said amount without protest or demur subject only to condition that if the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider can prove and establish that the exclusion of them from the tender process or termination of the contract after the contract awarded to them has caused no damage or less damage than the amount of the liquidated damages, the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider shall compensate the principal only to the extent of the damages in the amount proved.**

Section 5: Previous Transgression

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider declares that no previous transgressions occurred the last three years with any other company in any country conforming to anti-corruption approach or with any other public sector enterprise in India that could justify its exclusion from the tender process.
2. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider make incorrect statement on this subject, it can be disqualified from the tender process or the contract, if already awarded can be terminated.

Section 6: Equal treatment of all Bidder/ Contractor/ Suppliers/ Purchasers/ Service Providers.

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider undertakes to demand from all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will have the liberty to enter into agreements with identical conditions as this one with all other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider.
3. The Principal will disqualify from the tender process any or all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider who do not sign this Pact or violate its provisions.

Section 7: Criminal charges against violating Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider

If the Principal obtains knowledge of conduct of Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, or of an employee or a representative or an associate of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer/Vigilance Department of the Principal.

Section 8: Independent External Monitor/ Monitors

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally, independently and impartially. He would report to the Chairman, AYCL.
3. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, if any, with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relationship between the Principal and the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The parties can offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes that a violation of this agreement has committed, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The monitor will submit a written report to the Chairman, AYCL, within 6 weeks from the date of reference or intimation to him by the principal and, should the occasion arise, submit proposals for correcting such problematic situations.

7. If the Monitor has reported to the Chairman, AYCL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman AYCL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer/Vigilance Department, the Monitor may also transmit this information directly to the Chief Vigilance Commissioner, Government of India.

Section 9 - Pact Duration

This pact begins when both parties have legally signed it. It expires 12 months after the last payment made under the contract, and for all other sub-contractors 6 months after the date of contract has been awarded.

Section 10 – Other Provisions

1. This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Kolkata.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case the parties will strive to come to an agreement to their original intentions.

(For & on behalf of the Principal)

(For & On behalf of
Bidder/Contractor/
Supplier/Service Provider)

(Office Seal)

(Office Seal)

Place.....

Date.....

Witness 1:.....

Witness 2:.....

(Name & Address).....

(Name & Address).....

Annexure 2: Empanelment Format

NAME OF THE UNIT

Application for Empanelment Form

The applicants are required to furnish full information to the queries included in this form. In giving the particulars, the supporting documents/ certificates, as called for per queries at places, must be tagged with the application for evidencing the information furnished in the application for empanelment.

This application form should be submitted along with the registration fee of INR ... (Rupees) by crossed Postal Order/ Bank Draft in favour of Andrew Yule & Company Ltd.

- 1) Date of Advertisement for Registration :
- 2) Name of the Firm in Full:
- 3) Address of the Firm :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop/ Godown
 - e) Depot
- 4) Telephone/Telegram/Fax No./E-mail :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop
 - e) Depot
- 5) Status of the Organisation :
- 6) Whether Manufacturer/Contractor/ : Fabricator/ Sub-contractor/
- 7) Item for which empanelment is sought :
- 8) Banker's Name :
 - a) Name of the Branch
 - b) Address of the Branch
 - c) Account Number

Note : Confidential Report of financial position will be requested for by AY & Co. Ltd. from the Bankers.

- 9) Trade Licence No. : (Please attach a Xerox copy)
- ~~10) Factory Licence No. : (Please attach a Xerox copy)~~
- 11) Whether registered as an SSI Unit. : If yes, Registration No.
(Please attach a Xerox copy)
- 12) Sales Tax Registration No. :
 - a) Central
 - b) State
(Please attach a Xerox copy of Registration Certificate)
- 13) I.T. Permanent Account No.
- 14) Photo copies of current I.T. & Tax : clearance Certificates are to be attached
- 15) Whether the applicant is already empaneled: in this enterprise. If so, the details are to be furnished stating the types of jobs executed, etc. i.e.
 - (a) Description of the job (b) Year
 - (c) Amount & (d) Authorised by

16) Whether the applicant is empaneled with any : other Public Sector Undertaking/ other reputed manufacturers.

If so, the details are to be furnished

17) Financial Capacity (Year) :

a) Fixed Capital

b) Working Capital

(copies of Balance Sheet & Profit & Loss A/c for last 3 years should be attached)

18) Technical capacity :

(i) Tools & Equipment list (to be attached)

(ii) Manufacturing Capacity: (to be quantified)

19) Manpower on Rolls :

Total Manpower in Roll

a) Skilled workers

b) Unskilled workers

c) Others

d) Supervisors

e) Engineers

20) Name & Residential address of : Partners/ Directors/ Proprietors,
as the case may be

21) Whether any Govt. Servant(s) or : dismissed Employee(s) of Andrew Yule
& Co. Ltd./ any other Govt. Undertaking is in employment under the applicant

22) Whether the applicant or any of its Partners/ Directors has been banned or removed from the
approved list

of suppliers by the Enterprise or Undertaking / any other Enterprise or Undertaking in the past

I/ We hereby certify that the particulars furnished by me/ us above are true to the best of my/ our knowledge and belief and misrepresentations of facts will render me/ us liable to any action as may be deemed fit by Andrew Yule & Co. Ltd. Unit/ Division have the sole discretion to reject or accept my / our candidature for empanelment.

Place : (Signature of the Applicant) Office Stamp/Seal

Date :

Annexure 3: Purchase Requisition (Indent) for Works

Name of the Unit/division
Factory/Tea Garden

PURCHASE REQUISITION

FORM NO: -

Print Date: - XX/XX/XXXX

- Purchase Copy
 Planning Copy

S.O. NO	Date
Ref No	Section Planning

PR No.	Date
JOB NO.	BOM NO.

Remarks:

- Hold Passed

Sl.	Item Code	Cat	SSR/SAC Code	Description/Drawing No Remarks	<--Proc.--> Qty UOM	<-Factory--> Qty UOM	Delivery Within <---Schedule--->	REMARKS

REMARKS: F = Procurement S = Sub-Contract
I = Existing Item Rate; R = Rate Contract; E = Enquiry; M = Own Make Item (Proc. Not Reqd.)

NOTE:-
1 Test Certificates & inspection reports to be produced.
2 Code No. / Fan Size must be marked by paints on Finished materials.

Indenter
/

Authorised Signatory /
Unit Head

Annexure 4: Bid Opening Attendance Sheet cum Report (Outside GeM)

Name of the Unit/Division
Bid Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidders's Authorization & Date	Represented by	Contact No	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No	Bidder's Name	Bidder's Ref & Date	Submission of Requisite EMD (Y/N)	Submission of Mandatory Documents (Y/N)	Rate Quoted & Taxes/ Duites	Signature of Representative

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time	Signature, Date and Time
Name and Designation of Tender Opening Officer	Name and Designation of Tender Opening Officer

Annexure 5: Tender Committee Minutes Format

(For Techno-Commercial/Financial Bids)

Unit/Division: _____ Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Section I: Top Sheet					
File No:				Date:	
Description				Estimated Cost:-	
Tender Published In				Date of Publication	
Bid Validity				Bid Opening Date	
Past Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (INR)	Remarks
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Salient Feature of the Tender					
Review background of indent; technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project					
Review mode of bidding; bidding document contents; bid publication; level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.) and any other procurement of this requirement in process (at various stages)					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Section III: Preliminary Evaluation					
Review handling of any complaints received					
Review/confirmation of quantity and period of delivery required					
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications					

Section IV: Evaluation of Responsive Bids

Bid-wise deliberation should be recorded

In case of evaluation of Financial Bids

- i. Start with review of techno-commercial evaluation
- ii. Insert a summary table of evaluated price in the order of L1, L2, etc.
- iii. Deliberations should be in the sequence of L1, L2, etc.

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- a. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
- b. Also mention that the rates recommended are considered reasonable (and basis for such determination).
- c. Total value of the recommendations for determining level of acceptance authority.
- d. Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- e. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per DOP.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority:

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____

Annexure 6: Invitation and Declaration for Negotiations (Outside GeM)
Invitation for Negotiations
(On letterhead of the unit/division)

Ref No:

Dated

To M/s

Subject: Tender No ----- opened on -----for the supply of -----

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

Yours faithfully,

Authorized Signatory

Enclosure:

- i) Form of Declaration
- ii) Form of Revised Offer

Annexure 7: Format of Revised Offer in Negotiations (Outside GeM)

Revised Offer in Negotiations
(On company letterhead)

From.....
Full address.....
To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no:_____ dated: _____

3. On further discussions with your representatives onin response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.
3. I/we undertake to execute the contract as per following Schedule.....
4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or officer
authorised to sign the bid
documents on behalf of the
bidder

Annexure 8: No Claim Certificate

(On Contractor's letterhead)

To,
(Contract Executing Officer)
Unit/division

NO CLAIM CERTIFICATE

Sub: Contract Agreement no. ----- dated -----for the supply of -----

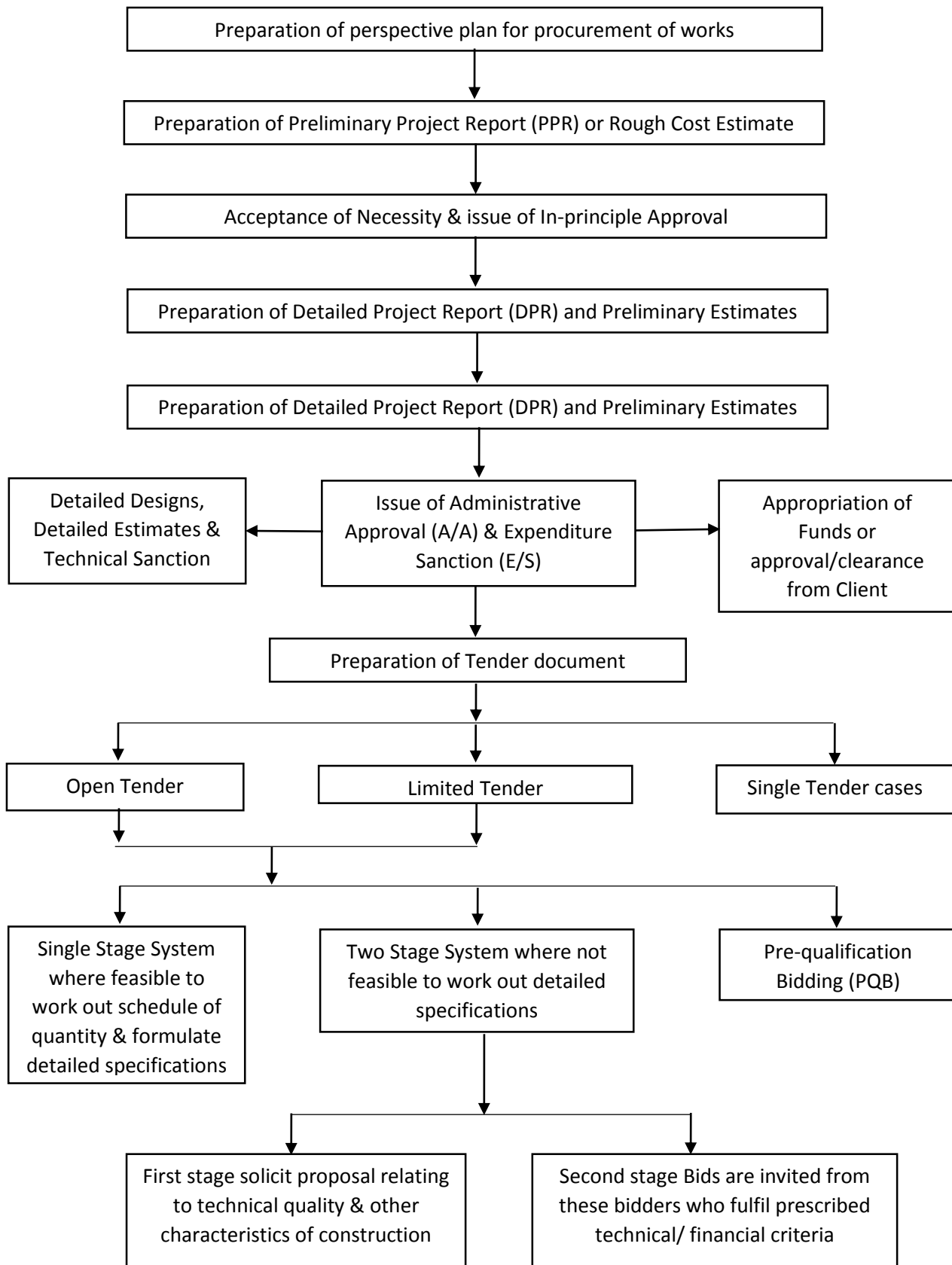
We have received the sum of INR (Rupeesonly) in full and final settlement of all the payments due to us for the supply of under the above mentioned contract agreement, between us and unit/division. We hereby unconditionally, and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against unit/division, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,
Signatures of contractor or
Officer authorised to sign the
contract documents on behalf of
the contractor
(Company stamp)

Date:

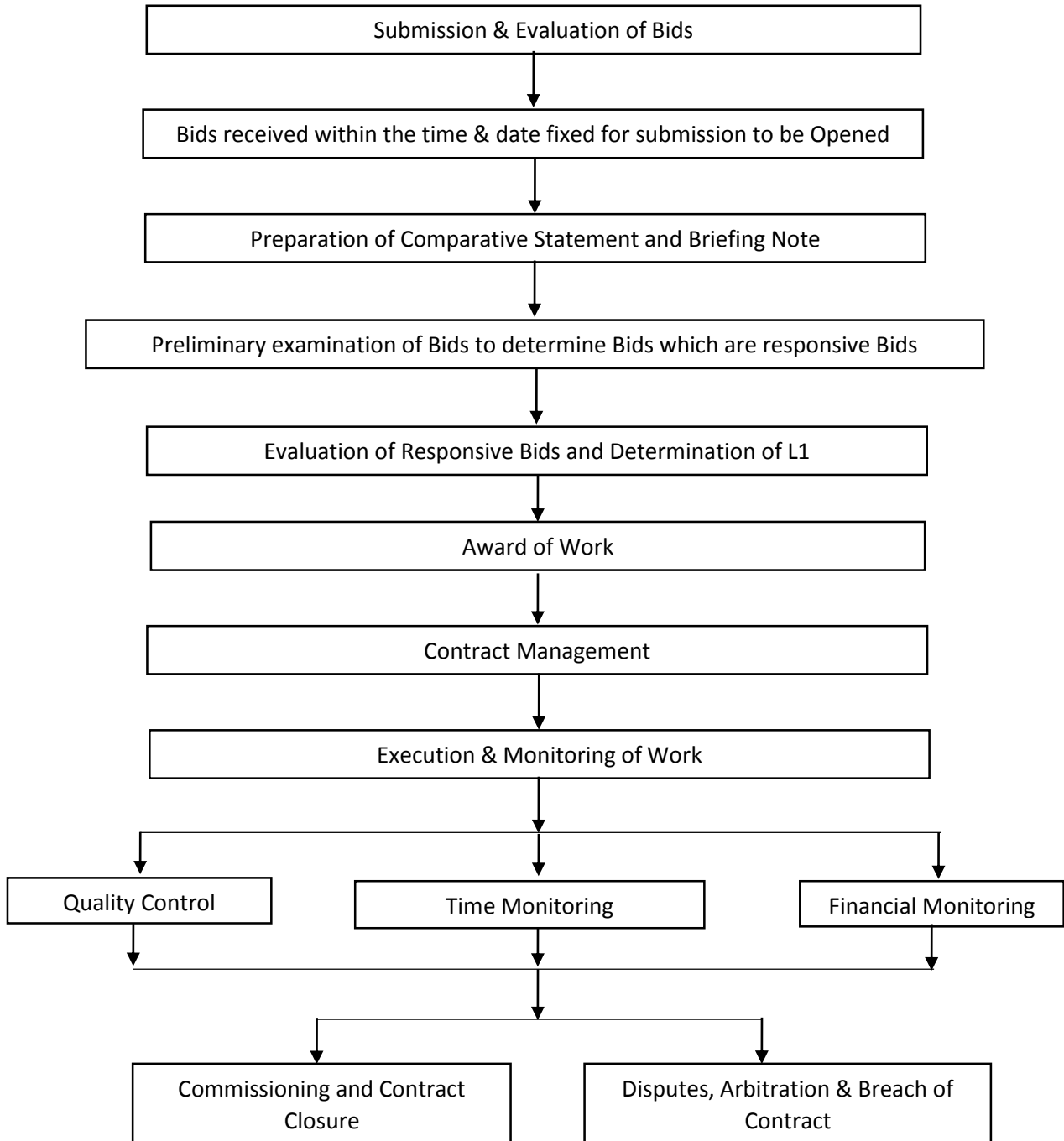
Place:

Annexure 9: Flowchart of Process of Procurement of Works



.....contd: Submission and Evaluation of Bids

Procedure for Submission and Evaluation of Bids –a flowchart



Annexure 10: Additional Resources relating to Procurement of Works

Department of Expenditure, Ministry of Finance

Manuals for Procurement of Goods and for Procurement of Consultancy and other services:

<http://doe.gov.in/manuals>

GFR, 2017: <http://doe.gov.in/order-circular/GENERAL%20FINANCIAL%20RULES>

Department of Economic Affairs, Ministry of Finance

PPP Cell, Infrastructure Division: <https://www.pppinindia.gov.in/>

CPWD Publications: http://cpwd.gov.in/Documents/cpwd_publication.aspx

Manuals

CPWD Works Manual 2019

CPWD Maintenance Manual 2012

General Conditions of Contract (GCC) GCC 2014- PDF

Plinth Area Rates

Supplement for Specialized E&M Works 2014 - View in PDF

Plinth Area Rates 2012 - View in PDF

Analysis of Rates for Delhi

2016 -Civil Vol-I, Vol-II 2016 -E & M

Schedules of Rates (Civil)

Delhi Schedule of Rates 2016 - Vol-I, Vol-II DSR2016-(E&M) in PDF

Specifications (Civil) Specifications Volumes I Specifications Volumes II Other Publications

Various Local Approvals and Clearances Required For Large Scale Project in Metro Cities

CVC - Circulars on Tenders: http://cvc.nic.in/proc_works.htm

CVC – CTE Reports: http://www.cvc.nic.in/cte_menu.htm

Central Public Procurement Portal (CPPP): <https://eprocure.gov.in/cppp/>

Annexure 11: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means:
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or e. An Indian (or other) agent of such an entity; or
 - e. A natural person who is a citizen of such a country; or
 - f. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The beneficial owner for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation –

 - a. "Controlling ownership interest" means ownership of or entitlement to more than 25% of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than 15% of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

**PROCEDURE/ MANUAL FOR
PROCUREMENT OF CONSULTANCY AND OTHER SERVICES
(TO BE EFFECTIVE FROM MAY 9, 2024)**

PREFACE

1. The present Purchase Procedure of Andrew Yule & Co Ltd. (AYCL) uniformly followed by all the Divisions and Units was approved by the Board of Directors of AYCL in its 249th meeting held on March 30, 2022 and was made effective from April 01, 2022.
2. The Manual on Procurement of Consultancy & Other Services has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner.
3. Any new guidelines/regulations/directives that may be issued in future by Govt. of India also shall be complied with. For such new/revision/amendments of guidelines, interpretation, clarification and issues relating to this manual, the Procurement Policy Division, Department of Expenditure, Ministry of Finance may be referred.
4. Manuals issued by AYCL are to be taken as generic guidelines, which must be necessarily broad. Units/Divisions are advised to supplement this manual to suit their local/specialized needs, by taking necessary approval in accordance with the Delegation of Power of AYCL.

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Abbreviations and Acronyms

AAEC	Appreciable Adverse Effect on Competition	EC	Evaluated Cost
AYCL	Andrew Yule & Co Ltd	ECS	Electronic Clearing System
BC (selling)	Bill for Collection Selling (Foreign Exchange) Rate	EMD	Earnest Money Deposit
BDS	Bid Data Sheet	Eoi	Expression of Interest (Tender)
C&AG	Comptroller and Auditor General (of India)	EPF	Employee Provident Fund
C (F) A	Competent (Financial) Authority	ESI	Employee State Insurance
CAPEX	Capital Expenditure (model of acquisition/ procurement)	FEMA	Foreign Exchange Management Act
CBI	Central Bureau of Investigation	FM	Force Majeure
CCI	Competition Commission of India	FTP	Full Technical Proposal
CEC	Consultancy Evaluation Committee	GCC	General Conditions of Contract
CIPP	Code of Integrity for Public Procurement	GeM	Government Electronic Market
CMC	Contract Management Committee	GeMAR&PTS	GeM Availability Report and Past Transaction Summary
CPO	Central Purchasing Organizations	GFR	General and Financial Rules, 2017
CPPP	Central Public Procurement Portal	Gol	Government of India
CRAC	Consignee Receipt and Acceptance Certificate	GTE	Global Tender Enquiry
CV	Curriculum Vitae	HOD	Head of the Department
CVC	Central Vigilance Commission	HUF	Hindu Undivided Family
CVO	Chief Vigilance Officer	ICT	Information & Communications Technology
DFPR	Delegation of Financial Power	IEM	Independent External Monitor
DG	Director General	IP	Integrity Pact
DGS&D	Directorate General of Supplies and Disposals	ISO	International Organization for Standardization
DOP	Delegation of Power - AYCL	IT	Information Technology
DPIIT	Department for Promotion of Industry and Internal Trade	ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)
DSC	Digital Signature Certificate	ITC	Instructions to consultants

JV	Joint Venture (Consortium)
L-1	Lowest Bidder
LCC	Life Cycle Costing
LCS	Least Cost System
LD	Liquidated Damages
LEC	Lowest Evaluated Cost
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)
Lol	Letter of Invitation
LTE	Limited Tender Enquiry
MSME	(Ministry of) Micro Small and Medium Enterprises
MSMED	Micro, Small and Medium Enterprises Development Act, 2006
NGO	Non-Government Organisation
NIC	National Informatics Centre
NIT	Notice Inviting Tender
OPEX	Operating Expense (model of acquisition/ procurement)
PA	Procurement Agent(s)
PAN	Personal Account Number
PPD	Procurement Policy Division
PPP-MII	Public Procurement (Preference to Make in India), Order
PQB	Prequalification Bidding
PSARA	Private Security Agencies Regulation Act, 2005
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise
QCBS	Quality and Cost Based Selection
(S) RfP	(Standard) Request for Proposals (Document)
REoI	Request for Expression of Interest

RTI	Right to Information (Act)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SHG	Self Help Group
SLA	Service Level Agreement
SoPP	Schedule of Procurement Powers
SoR	Schedule of Rates
SSS/ STE	Single Source Selection/ Single Tender Enquiry
STP	Simplified Technical proposal
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
TCO	Total Cost of Ownership
ToR	Terms of Reference
UAM	Udyam Aadhaar Memorandum
URC	Udyan Registration Certificate
VfM	(Best) Value for Money

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires:

- i. "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- ii. "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
- iii. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with Divisions/Units of AYCL;
- iv. "(Standard) Bid(ding) documents" (including the term 'tender (enquiry) documents' or 'Request for Proposal Documents' – RfP documents in certain contexts) means a document issued by the Divisions/Units of AYCL, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid. A Standard (Model) Bidding Document is the standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- v. "Bidder registration document" means a document issued by AYCL, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- vi. "Bid security" (including the term 'Earnest Money Deposit'(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
- vii. "AYCL" or the "Company" means Andrew Yule & Co Ltd;
- viii. "Unit" or "Division" means the Divisions / Units of Andrew Yule & Co Ltd;
- ix. "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- x. "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- xi. "Competent authority" means the executive(s) who finally approves the decision as per Delegation of Power of the Company.
- xii. "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, architectural services, finance accounting and taxation services, training and development. It may include small works or supply of goods or other services which are incidental or consequential to such services;

- xiii. "e-Procurement" means the use of information and communication technology (specially the internet) by the unit/division of AYCL in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiv. "Indenter" means the units/divisions of AYCL and its officials (executives/NUS) initiating a procurement indent, that is, a request to procure goods, works or services specified therein;
- xv. "Inventory" means any material, component or product that is held for use at a later time;
- xvi. "Invitation to (pre-)qualify" means a document including any amendment there to published by the Units/Divisions of AYCL inviting offers for pre-qualification from prospective bidders;
- xvii. "Invitation to register" means a document including any amendment thereto published by the Units/Divisions of AYCL inviting offers for bidder registration from prospective bidders;
- xviii. "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.
- xix. "Non-consultancy services" includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;
- xx. "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017;
- xxi. "Notice inviting tenders" (including the term 'Invitation to bid' or 'request for proposals' in certain contexts) means a document and any amendment thereto published or notified by the units/divisions of AYCL, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii. "Other services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.
- xxiii. "Outsourcing of Services" means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of the Company (e.g. Security Services, Horticultural Services, Janitor/Cooking/Catering/Management Services for Hostels and Guest Houses, Cleaning/Housekeeping Services, Errand/Messenger Services, and so forth). Besides outsourcing, other services also include procurement of short-term stand-alone services.
- xxiv. "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxv. "Pre-qualification document" means the document including any amendment thereto issued by unit/division of AYCL, which sets out the terms and conditions of the prequalification bidding and includes the invitation to pre-qualify;

- xxvi. "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or "Contract' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for Services' under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the AYCL or units/divisions of AYCL and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term "contract" will also include "rate contract' and "framework contract";
- xxvii. "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) AYCL's Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);
- xxviii. "Procurement process" means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
- xxix. "Procuring authority" means the executives/NUS who finally approves as well as those executives/NUS and tender committee members who submit the notes/reports for the approval for any decision.
- xxx. "Procuring entity" means any unit/division of AYCL to which powers of procurement have been delegated;
- xxxi. "Prospective bidder" or "vendor" means anyone likely or desirous to be a bidder;
- xxxii. "Registering authority" means procurement department or the department which registers bidders for different categories of procurement.
- xxxiii. "Registered Supplier" or "Registered Vendors" means any supplier who is on a list of registered/ emplaned suppliers of AYCL;
- xxxiv. "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the unit/division of AYCL to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- xxxv. "Service" means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by AYCL or unit/division of AYCL but does not include appointment of an individual made under AYCL Recruitment & Promotion Policy in this behalf; It includes 'Consultancy Services' and 'Other (Non-consultancy) Services.
- xxxvi. "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof.

1. Introduction to Procurement of Consultancy/Other Services

1.1 Procurement Rules and Regulations; and this Manual

Units/ divisions of AYCL spend a sizeable amount on the procurement of goods, works and services to discharge the duties and responsibilities assigned to them. The Company has been delegated full powers to make their own arrangements for procurement of goods and services. These powers have to be exercised as per the DOP of the Company and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017.

1.2 Applicability of this Manual

This manual is applicable to procurement of all "Services" defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by the unit/division but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services'. If the generic word "Services" is used in this manual, it implies both Consultancy and other services taken together.

- i. **"Consultancy services"** (Rule 177 of GFR 2017) means any subject matter of procurement (which as distinguished from 'Non-Consultancy Services' involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by the unit/division but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:

- a. bespoke software development;
 - b. cloud based services and
 - c. composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth and operation/maintenance of the system for a define period after go-live etc.
- ii. **"Other services"** (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods/ consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and forwarding; courier services; upkeep and maintenance of office/buildings/Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.

- iii. The term **'Outsourcing of Services'** implies deployment of outside agencies on a sustained long-term

(for one year or more) for performance of other services which were traditionally being done in-house (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/Housekeeping Services, Errand/Messenger Services, and so forth). There may be Human Resources and administrative issues involved in 'outsourcing' which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, other services also include procurement of short-term stand-alone services.

- iv. If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/commissioning of Machinery and Plant and so on, it may be handled as procurement of goods rather than procurement of services.
- v. It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory part of services dominates (and the physical part is incidental), the selection needs to be dealt with in consultancy mode. For example, if the task is looking at the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.
- vi. For sake of simplicity, this Manual for Procurement of Consultancy and Other Services is written from the point of view of procurement of Consultancy Services.

1.3 Authorities competent to procure consultancy and other services and their Purchase Powers

A Competent authority that is competent to incur expenditure may sanction the procurement of Consultancy and Other Services required to do the business and other procurement activities related to the company in accordance with the DOP of the Company by following the 'Procurement Guidelines' described in this Manual.

1.4 Principles of Public Procurement

Over and above the basic aims of procurement, the obligations of procuring authorities can be grouped into following five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

- i. Transparency principle;
- ii. Professionalism principle;
- iii. Broader obligations principle;
- iv. Extrinsic legal principle; and
- v. Public accountability principle.

1.5 Standards (Canons) of Financial Propriety

Procurement done by units/divisions of AYCL is like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. Therefore, it may be useful to refer to the Rule 21 of the General Financial Rules, 2017, "standards of financial propriety".

1.6 Public Procurement Infrastructure – Central Public Procurement Portal

Central Public Procurement Portal: Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC) in association with Department of Expenditure to ensure transparency in the public procurement process. The primary objective of the CPPP is to provide a single point access to the information on procurements made across various Ministries and the Departments. It is mandatory for all units/divisions to publish on the CPPP all their tender enquiries and information about the resulting contracts. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP.

1.7 Product Reservation and Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services, portal or any other suitable portal.

i. Public Procurement Policy for Micro and Small Enterprises (MSEs)-Rule 153 (ii) of GFR 2017

From time to time, the Government of India lays down procurement policies to help inclusive national economic growth by providing long-term support to micro, small and medium enterprises and disadvantaged sections of society. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website. Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy. Some salient features of the policy are mentioned below:

- a. MSEs are exempted from paying the Tender Fee and Earnest Money Deposit (EMD). However, exemption from paying Performance Bank Guarantee is not covered under the policy.
- b. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where units/divisions may prefer the vendor to have prior experience rather than giving orders to new entities.
- c. Units/divisions to make the payment 45 days after the supplies or as agreed in the purchase order/contract.
- d. In tender, participating MSEs quoting price within price band of L1+15% shall also be allowed to supply up to 25% of total tendered value by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE. This 25% quantity is to be distributed proportionately among the bidders, in case there are more than one MSEs within such price band.
- e. Within this 25% quantity, a purchase preference of 4% is reserved for MSEs owned by SC/ST entrepreneurs and 3% is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, these will be met by other MSEs. Following MSEs would be treated as owned by SC/ ST entrepreneurs:
 1. In case of proprietary MSE, proprietor(s) shall be SC/ST;
 2. In case of partnership MSE, SC/ST partners shall be holding at least 51% shares in the unit;
 3. In case of Private Limited Companies, at least 51% share shall be held by SC/ ST promoters.
- f. If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- g. In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE.
- h. In order to develop/enhance participation of MSE vendors including MSEs owned by SCs/STs/ Women, units/divisions of AYCL, periodically, have to conduct Special Vendor Development

Programmes/Buyer-Seller Meets.

- i. To monitor the progress of procurement, Ministry of MSME has launched the MSME 'Sambandh' Portal for uploading procurement details on a monthly and an annual basis which is regularly monitored by the Ministry.
- j. To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

ii. Relaxation of Prior Turnover and Prior Experience for STARTUPS

- a. As per Department of Expenditure, Ministry of Finance OM No. F.20/2/2014/PPD- (Pt) dated 25.07.2016 circulated vide MSME F. No. 24/2/2003/Fin-1 dated 02.08.2016, relaxation of the condition of prior turnover and prior experience in public procurement has been extended to all Startups (whether MSE or not) subject to meeting of quality and technical specifications in accordance with the relevant provisions [Rule 160(i)(a)] of GFR, 2005 {In GFR 2017 it is Rule 173(i)(b)}.
- b. It has subsequently been clarified by the Department of Expenditure, vide OM No. F.20/2/2014/PPD- (Pt) dated 20.09.2016 that there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entities may prefer the vendors to have prior experience rather than giving orders to new entities. For such procurements, wherever adequate justification exists, the procuring entities may not relax the criteria of prior experience/ turnover for Startups (medium enterprises).
- c. In view of the above instructions, wherever, it is decided not to relax prior experience/turnover criteria, adequate justification has to be given.
- d. Further, in order for a "Startup" to be considered for eligible the Startup should
 - i. be supported by a recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy & Promotion (DIPP), from an Incubator established in a post-graduate college in India; or
 - ii. be supported by an incubator which is funded (in relation to the project) from GoI as part of any specified scheme to promote innovation; or
 - iii. be supported by a recommendation (with regard to innovative nature of business), in a format specified by DIPP, from an Incubator recognized by GoI; or
 - iv. be funded by an Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with SEBI that endorses innovative nature of the business; or
 - v. be funded by GoI as part of any specified scheme to promote innovation; or
 - vi. have a patent granted by the Indian Patent and Trademark Office in areas affiliated with the nature of business being promoted.

iii. Procurement Preference to Make in India-Rule 153 (iii) of GFR, 2017

To encourage 'Make in India' and promote manufacturing and production of goods and services in India, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:

- a. 'Margin of purchase preference' means the maximum extent to which the price quoted by a "Class-I local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed as 20%.
- b. 'Consultancy and Other Services' means all jobs as mentioned in clause 1.2 of this manual.
- c. Eligibility of 'Class-I local supplier'/'Class-II local supplier'/'Non-local suppliers' for different types of procurement
 - i. If there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be

eligible to bid irrespective of purchase value

- ii. Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by units/divisions, except when global tender enquiry has been issued.
 - iii. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'
 - iv. For the procurement, not covered by sub-para (c)(i) above, and with estimated value of purchases less than INR 200 Cr, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- d. Purchase Preference
- i. Purchase preference shall be given to 'Class-I local supplier' for procurements undertaken in the manner specified here under.
 - ii. For the procurement which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly.
 4. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 5. "Class-II local supplier" will not get purchase preference in any procurement undertaken.

e. Applicability in tenders where contract is to be awarded to multiple bidders

In tenders, where contract is awarded to multiple bidders, subject to matching of L1 rates or otherwise, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per the following procedure:

- i. In case there is sufficient local capacity and competition for the item to be procured, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- ii. In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- iii. If 'Class I Local suppliers' qualify for the award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents.
- iv. In case 'Class I Local suppliers' do not qualify for award of contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non-local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50% of the tendered quantity.
- v. First purchase preference has to be given to the lowest quoting 'Class-I local "supplier', whose quoted rates fall within 20% margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced

from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20% margin of purchase preference, and so on.

- f. **Exemption of small purchases:** Notwithstanding anything contained in paragraph (c), procurements where the estimated value to be procured is less than INR 5 lakhs shall be exempt from the Order. However, it shall be ensured that procurement is not split for the purpose of avoiding the provisions of this Order.
- g. **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the 'local content' requirement is minimum 20%. Units/divisions may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier' / 'Class-II local supplier'.
- h. **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- i. **Government e-Marketplace (GeM):** In respect of procurement through the GeM shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- j. **Verification of local content:**
 - i. The 'Class-I local supplier'/'Class-II local supplier' at the time of tender bidding shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - ii. In cases of procurement for a value in excess of INR 10 crores, the 'Class-I local supplier' / 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - iii. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity. AYCL may constitute committees with internal/external experts for independent verification of self-declarations and auditor's/accountant's certificates on random basis and in the case of complaints. AYCL may prescribe fees for such complaints.
 - iv. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the GFR for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the GFR along with such other actions as may be permissible under law.

- v. A supplier who has been debarred by any unit/division for violation of the Order shall not be eligible for preference under the order for procurement by any other unit/division for the duration of the debarment.
- vi. The debarment shall take effect prospectively from the date on which it comes to the notice in the manner prescribed below:
 1. The fact and duration of debarment for violation of order by any unit/division to be promptly brought the notice of all the units/divisions of AYCL.
 2. A list of such cases along with name of the suppliers and the period of debarment shall be displayed on the AYCL website on a periodical basis.
 3. In respect of units/divisions other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of receipt of notification/ uploading on website in such a manner that ongoing procurements are not disrupted.
- k. **Specifications in Tenders and other procurement solicitations:**
 - i. Units/divisions shall ensure that the eligibility conditions in respect of previous experience fixed in any tender do not require proof of supply in other countries or proof of exports, *unless there is any special requirement*.
 - ii. Units/divisions shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
 - iii. Units/divisions shall review all existing eligibility norms and conditions with reference to sub-paragraphs (k) (i) and (ii) above.
- l. **Reciprocity Clause:** In case the company identifies that it is not allowed to participate and /or compete in procurement by any of the Foreign Governments due to restrictive tender condition which have direct/indirect effect of barring it such as restriction in the procuring country, execution of projects of specific value in the procuring country etc. It shall be notified to the nodal ministry and GeM through nodal ministry for appropriate reciprocal action.
- m. **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,
 - i. reduce the minimum local content below the prescribed level; or
 - ii. reduce the margin of purchase preference below 20%; or
 - iii. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

1.8 When is Procurement of Services justified

- i. **Consultancy Services:** Organization can hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion. Engagement of consultants may be resorted to in situations requiring high quality services for which the unit/division does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s). We may justify need for Procurement of Consultancy Services on consideration of:
 - a. The inadequacy of Capability or Capacity of required expertise in-house;

- b. The need to have qualified consultant for providing a specialized high quality service;
 - c. Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
 - d. The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;
 - e. Need to acquire information about/ identifying and implementing new methods and systems;
 - f. Need for planning and implementing organizational change
 - g. There may be internal capacity/ capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/ commitment/ usage of:
 - i. Staff/ Management/ Organization;
 - ii. Technological and Material Resources;
 - iii. Money, and
 - iv. Time/ Speed of execution.
- ii. **Other (Non-consultancy) Services:** In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits the Company to procure/outsources auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:
- a. Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:
 - i. Staff/ Management/Organization;
 - ii. Technological and Material Resources;
 - iii. Money, and
 - iv. Time/ Speed of execution.
 - b. An administrative policy decided by the Organization to outsource specific (class of) services;

1.9 Principles for Public Procurement of Services

- i. Other principles of Public Procurement as mentioned in clause 1.4 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:
 - a. Services to be procured should be justifiable in accordance with Para 1.8 above;
 - b. 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 unit/division. 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 unit/division;
 - c. Equal opportunity to all qualified service providers/consultants to compete should be ensured;
 - d. Engagements should be economical and efficient. (Rule 182 of GFR 2017);
 - e. Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;
 - f. Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10 (a) above
- ii. 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)

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

Laws which are applicable to Procurement of Goods equally apply to Procurement of Consultancy and other services. Legally speaking consultants/service provider would be an Agent of the Principal/ Client/Procuring Entity – unit/division, 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 unit/division 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 unit/division's contract by the agents may render the unit/division 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.

1.11 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by AYCL 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.

1.12 Procurement Cycle

The procurement process for goods, works and/or services typically involves the following cycle of activities, undertaken in the order stated below.

- a. **Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- b. **Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- c. **Bid Evaluation:** Evaluation of bids and award of contract; and
- d. **Contract Execution:** Contract management and closure.

1.13 Procurement Proposal for Consultancy and other services

- i. A critical part of the procurement of Services process is preparing an appropriately staffed and budgeted Procurement Proposal (which serve the role that an Indent serves in procurement of Goods).
- ii. **Preparing Procurement Proposal:** As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared (Please see a suggested format in Annexure 5: Format of Procurement Proposal). It is akin to the Indent for Materials/Material Requisition in case of Procurement of Goods. The User should prepare in simple and concise language the requirement, purpose/objectives and the scope/outcomes of the assignment and justify the assignment based on analysis of in-house available capacity/capability. The eligibility and pre-qualification criteria to be met by the consultants/service providers should also be clearly identified at this stage. Justifications for procurement of Consultancies/ Services as given in Para 1.8 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which

the subsequent detailing of Terms of Reference (in case of consultancy services)/ Activity Schedule (in case of other/ non-consultancy services) is drawn up. A procurement proposal should contain:

- a. **Purpose/ Objective Statement of Services:** Purpose/ Objective Statement of Services" should be prepared by the user. One of the important content of this statement is description of service to describe the subject matter of procurement which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit in with short-term and strategic goals of the unit/division. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic, but is a necessary and critical first step in properly designing a procurement proposal.
 - b. **Service Outcome Statement:** Once the "Purpose/Objective of Services" has been clearly defined, the next step is to formulate a 'Service Outcome Statement'. This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services, as well as the expected Time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organization). At this stage, it is not necessary go into details of all the activities required to achieve the service outcomes, but it should list at least the broad activities, would help in putting a rough estimate to the cost of the assignment. A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by service provider and the time-frame within which the output needs to be received by the user. The estimated cost is needed to ascertain the level of approval necessary as per DoP of the Company.
 - c. **Justification for the procurement of Services:** The Procurement proposal should analyse the capabilities/capacities required to carry out the assignment. It should also analyse the available in-house capabilities/capacities and compare these with the ones required for the assignment. Based on this assessment the Procurement should be justified in the light of para 1.8 (a).
- iii. **In-principle Approval for initiating procurement of Services:** Based on the justification contained in the Procurement Proposal, in-principle administrative approval and budgetary sanction for initiating procurement of such services should be accorded by the Competent Authority (CA) as laid down in DOP. Further stages may be proceeded with, only after such approvals. (Rule 181 of GFR 2017)

2. Consultants, service providers and Governance Issues

2.1 Types of consultants/service providers

The term consultants/service providers includes a wide variety of private and public entities, including consultancy firms, engineering firms, Architectural Firms/consultants, construction management firms, management firms, procurement agents, inspection agents, auditors, investment and merchant bankers, universities/ educational institutions, research institutions, government agencies, non-governmental organizations (NGOs) and individuals/experts or their joint ventures. These can be grouped as:

i. Consortium of consultants/ service providers

In large and complex assignments consultants/service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy. In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a JV or sub-consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants/ service providers must become the lead member of the consortium. The unit/division should only deal with the lead member of consortiums for all the purposes. Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - INR 5 crore). Maximum number of partners in JV shall be limited (say – 3). In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to individually and separately meet (financial soundness). In this case it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit in case of experience of particular consultancy and financial turnover, if any.

Conflicting Association: A firm shall submit only one proposal, either individually or as a JV partner. If a firm, including a JV partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a firm from participating as a sub-consultant or an individual consultant to participate as a team member in more than one proposal when circumstances justify but only if permitted by the RfP document.

ii. Consultancy or Service Providing Firms

The main source of consultants and service providers is Consultancy or Service providing firms of diverse specializations that provide teams to Clients. These firms provide project preparation services, project implementation supervision services, training, advisory services, and policy guidance. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at international level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

iii. Individual consultants/ service providers

Individual consultants or service providers are recruited for similar activities as Consultancy/Service providing firms when a full team is not considered necessary. They may be independent experts not permanently associated with any particular firm, or they may be employees of a firm recruited on an

individual basis. They may also be employees of an agency, institution, or university. They are normally recruited for project implementation supervision, training, provision of specific expert advice on a highly technical subject, policy guidance, special studies, compliance supervision, or implementation monitoring. Individual consultants/ service providers are not normally recruited for project preparation unless the proposed project is simple and, generally, a repeat of an already established and successful project. If more than three experts are required, then the assignment should normally be undertaken by a team from a firm. As with firms, individual consultants/service providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.

iv. Specialized Agencies and Institutions

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

v. Non-governmental Organizations (NGO)

There may be distinct advantage in use of Nongovernmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge – for example, Projects related to Corporate Social Responsibility (CSR).

vi. Retired Government Servant

Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged against regular vacant posts as consultant under this rule. Retired Government servants can be engaged only for the specific task and for specific duration as consultant. They should be assigned clear output related goals.

2.2 Code of Integrity for Public Procurement (CIPP)

- i. Procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of unit/division and the bidders/suppliers/contractors/consultants/service providers involved in procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ consultants/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/consultants/service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.
- ii. Code of Integrity for Public Procurement: Procuring authorities as well as bidders, suppliers, contractors and consultants/service providers should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- a. **“Corrupt practice”**: making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- b. **“Fraudulent practice”**: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- c. **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the unit/division, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- d. **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- e. **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of unit/division who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the unit/division with an intent to gain unfair advantage in the procurement process or for personal gain; and
- f. **“Obstructive practice”**: materially impede the unit/division’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the unit/division’s rights of audit or access to information;

iii. Conflict of Interest in case of consultants

- a. The consultant is required to provide professional, objective, and impartial advice, at all times holding the unit/division’s interests’ paramount, strictly avoiding conflicts with other assignments or his/its own corporate interests, and acting without any consideration for future work.
- b. The consultant has an obligation to disclose to the unit/division any situation of actual or potential conflict that impacts its/his capacity to serve the best interest of its client/unit. Failure to disclose such situations may lead to the disqualification of the consultant or termination of its/his contract during execution of the assignment.
- c. Without limitation on the generality of the foregoing, and unless stated otherwise in the data sheet for the RfP document, the consultant shall not be hired under the circumstances set forth below:
 - 1. **Conflicting activities**: a firm that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services. Conversely, a firm hired to provide consultancy services for the preparation or implementation of a project, or any of its affiliates, shall be disqualified from subsequently providing goods or works or no consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;

2. **Conflicting assignments:** Consultants (including its experts and sub-consultants) or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant for the same or for another Company; and
3. **Conflicting relationships:** A consultant (including its/his experts and sub-consultants) that has a close business or family relationship with a professional staff of the unit/division who are directly or indirectly involved in any part of: (i) the preparation of ToR for the assignment; (ii) selection process for the contract; or (iii) supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the client throughout the selection process and execution of the contract.

iv. Unfair Competitive Advantage in case of consultants

Fairness and transparency in the selection process require that the consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consultancy services related to the assignment in question. Such unfair competitive advantage is best avoided by full transparency and by providing equal opportunity so that all firms or individuals interested or involved have full information about a service assignment and its nature, scope, and background information. To that end, the request for proposals and all information would be made available to all short listed consultants simultaneously.

v. Obligations for Proactive Disclosures

- a. Procuring authorities as well as bidders, suppliers, contractors and consultants/service providers, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- b. Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;
- c. To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the unit/division. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

vi. **Punitive Provisions:** Without prejudice to and in addition to the rights of the Procuring Entity to other penal provisions as per the bid documents or contract, if the Procuring Entity comes to a conclusion that a (prospective) bidder/contractor/ Supplier/ consultant/ service provider, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Procuring Entity may take appropriate measures including one or more of the following:

- a. if his bids are under consideration in any procurement
 1. Forfeiture or encashment of bid security
 2. calling off of any pre-contract negotiations, and;
 3. rejection and exclusion of the bidder from the procurement process
- b. if a contract has already been awarded
 1. Cancellation of the relevant contract and recovery of compensation for loss incurred by the unit/division;

2. Forfeiture or encashment of any other security or bond relating to the procurement;
 3. Recovery of payments made by the unit/division along with interest thereon at the prevailing rate;
- c. Provisions in addition to above:
1. Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Company for a period not less than one year;
 2. In case of anti-competitive practices, information for further processing may be filed with the Competition Commission of India;
 3. Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

2.3 Integrity Pact (IP)

- i. The Pre-Bid Integrity Pact is a tool to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of Bidders, that while they themselves may abjure Bribery, but their competitors may resort to it and win contract by unfair means.
- ii. Ministry of Finance, Department of Expenditure have mandated Ministries/Departments and their attached/subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the company and as guidance, the threshold should be such as to cover bulk (80-90% by value) of its procurement expenditure
- iii. "The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:
 - a. Promise on the part of the buyer to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available.
 - b. Promise on the part of bidders not to offer any benefit to the employees of the buyer not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
 - c. Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders concerning prices, specifications, certifications, subsidiary contracts, etc.
 - d. Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/equipment at prices lower than the bid price;
 - e. Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
 - f. Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;
 - g. Bidders to disclose any past transgressions committed over the specified period with any other company in India or abroad that may impinge on the anti-corruption principle;
 - h. Integrity Pact lays down the punitive actions for any violation;
 - i. **IP would be implemented through a panel of Independent External Monitors (IEMs):** to be appointed by the company in consultation with CVC. Names and contact details of the Independent External Monitor(s) should be listed in NIT/tender. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. The company requires to select at most three (03) persons (below the age of 70 years) of high integrity

and reputation as Independent External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India Departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the company. Eminent persons, retired judges of High/Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years).

- j. In tenders meeting the criteria of threshold value/nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway;
- k. **Role/ Functions of IEMs:** The IEMs should perform their functions neutrally and independently. They would review, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties provided such meetings could have an impact on the contractual relations between the parties. Ideally, all IEMs of the Company should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/views to the designated officer of the company, at the earliest. The Monitors would also inform the company, if they notice or have reason to believe, a violation of the Integrity Pact. They may also send their report directly to the CVC, in case of suspicion of serious irregularities requiring legal/administrative action. At least one IEM would be invariably cited in the NIT. However, for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the company. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of the company shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

2.4 Debarment of Suppliers/contractors/consultants/service providers

- i. Registration/empanelment of suppliers/contractors/consultants/service providers and their eligibility to participate in unit/divisions' procurements is subject to compliance with Code of Integrity for Public

Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':

- a. *A bidder shall be debarred if he has been convicted of an offence-*
 1. *under the Prevention of Corruption Act, 1988; or*
 2. *the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*
- b. *A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*
- c. *A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.*
- d. *The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.*

- ii. Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject.

iii. Guidelines on Debarment of firms from Bidding:

- a. The guidelines are classified under following two types:-
 1. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
 2. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

Definitions:

- a. Firm: The term 'firm' or 'bidder" has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
- b. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 1. Whether the management is common;
 2. Majority interest in the management is held by the partners or directors of banned/suspended firm;
 3. Substantial or majority shares are owned by the banned/suspended firm and by virtue of this it has a controlling voice.
 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 5. All successor firms will also be considered as allied firms.

The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".

b. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

1. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
 2. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
 3. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide "Bid Securing Declaration" etc.
 4. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies, Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.
 5. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 6. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/ Additional Secretary as competent authority to debar the firms.
 7. Ministry/Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 8. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 9. Debarment is an executive function and should not be allocated to Vigilance Department.
- c. It is possible that the firm may be debarred concurrently by more than one Ministry/Department. Ministries/Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para (b) as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

d. Debarment across All Ministries/ Departments

1. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

2. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.
3. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
4. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
5. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
6. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

e. Revocation of Orders:

1. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
2. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.

f. Other Provisions (common to both types of debarment)

1. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
2. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
3. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
4. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
5. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
6. The period of debarment shall start from the date of issue of debarment order.
7. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
8. Ordinarily, the period of debarment should not be less than six months.
9. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

10. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

- iv. **Safeguarding the Company's Interests during debarment of supplier/contractor/consultant/ service provider:** Suppliers/contractors/consultants/service providers are important assets for the Company and punishing delinquent suppliers/contractors/consultants/service providers should be the last resort. It takes a lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers/contractors/consultants/service providers in a particular group of materials/ equipment, such punishment may also hurt the interest of Company. Therefore, views of the concerned unit/division may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers/contractors/consultants/service providers and in cases of less serious misdemeanours, the endeavor should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.
(Rule 151 of GFR 2017)

3. Types of Contracts and Systems of Selection of Consultants/Service Providers

3.1 Types of Contracts

Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption.

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

The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the unit/division 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.

3.3 Time-Based (Retainer-ship) Contract

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 is 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.

3.4 Percentage (Success/ contingency Fee) Contract

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.

3.5 Retainer and Success (Contingency) Fee Contract

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.

3.6 Indefinite Delivery Contract (Price Agreement)

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

3.7 Systems of Selection of service providers

- i. 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.
- ii. The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/criticality of quality requirements, internal capability of the unit/division 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.
- iii. 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'.
 - a. Price based System - Least Cost Selection (LCS);
 - b. Quality and Cost Based Selection (QCBS);
 - c. Direct Selection: Single Source Selection (SSS)

- iv. 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.
- v. It has become a practice 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. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:
 - a. The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
 - b. The qualification criteria were not unduly restrictive; and
 - c. Prices are reasonable in comparison to market values

3.8 Price based System - Least Cost Selection (LCS)

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% out of maximum 100%) 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 to 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 Chapter 6), if the evaluation criteria is only a fail/pass criteria prescribing only the minimum qualifying benchmark. Thus, in LCS, a simplified evaluation criterion may also be used where instead of a marking scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least INR 10 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 that qualify as per these technical evaluation criteria will only be considered as technically responsive, and the rest will be considered technically nonresponsive and will 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.

(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.

3.9 Quality and Cost Based Selection (QCBS)

In QCBS selection, minimum qualifying marks (normally 70-80 marks out of maximum 100 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 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 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 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 cases be equal). For example, the weightage given to cost score may be 30% and technical score may be given weightage of 70% (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% 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 1 provides a suggestive weighting for QCBS.

(Rule 192 of GFR 2017, also see para 6.9.2)

Table 1: 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

3.10 Direct Selection: Single Source Selection (SSS)

- i. 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 unit/division (*Rule 194 of GFR 2017, also see para 6.9.3*). The selection by SSS/nomination is permissible under exceptional circumstance such as:
 - a. tasks that represent a natural continuation of previous work carried out by the firm;
 - b. in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;

- c. situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
- d. At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
- e. Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the 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.

Unit/division 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.
- ii. 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.

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

- i. 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 budgeted in the tender document itself. FBS may be used when:
 - a. the type of consulting services required is simple and/or repetitive and can be precisely defined;
 - b. the budget can be reasonably estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
 - c. the budget is sufficient for the consultant to perform the assignment.
- ii. Under FBS, the selection of the consultant shall be made by one of the following two methods:
 - a. By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
 - b. In cases of repetitive or multiple assignments, by empanelling suitable quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of Company's 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 unit/division.

4. Preparing for Procurement of Consultancy Services

4.1 Preparation of Terms of Reference (ToR)

- i. ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified. A ToR explains the purpose/objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the unit/division and consultant, expected results, and deliverables of the assignment. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved. It reduces the risk for the unit/division of unnecessary extra work, delays, and additional expenses of the unit/division. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy.
- ii. The ToR shall include
 - a. Company's organisation background and Project background;
 - b. Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)
 - c. Detailed scope of work Statement including schedule for completing the assignment;
 - d. Expected requirement of key professionals and kind of expertise;
 - e. Capacity-building programme and transfer of knowledge, if any;
 - f. Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
 - g. Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;
 - h. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the Procuring Entity;
 - i. Institutional and organisational arrangement; and
 - j. Procedure for review of the work of consultant after award of contract
- iii. A template for developing a ToR is given at Annexure 6. It should cover following aspects:
 - a. **Detailed Scope of Work:** As part of the ToR, at its simplest, the 'Detailed Scope of Work ' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as envisage in the 'Brief proposal and Justification of the Services' (refer chapter 1). Starting from end-outcomes backwards, the process to achieve the outcomes is broken down into a discrete number of interrelated tasks, which the consultant will have to undertake. In consultancy Services, the 'Detailed Scope of Work' should describe only the activities, not the approach or methodology by which the results are to be achieved, since these are the task of the consultants. However, suggestions may be provided on the approach or the methodology that the consultants could or should use to execute the assignment. After the tasks are identified, a logical sequencing of the tasks must be determined. Usually a simple bar chart (or Gantt-chart) is the best way to illustrate required outputs over time and their relationship to each other. The 'Detailed Scope of Work ' contains such a sequence of tasks over a timeline and also tangible outputs and activities such as reports, workshops, or seminars.
 - b. **Expected requirement of key professionals and kind of expertise:** Except in very complex Consultancies, it is desirable not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as "activity based" ToR as opposed to "position-based" ToR. The ToR would list a range of tasks without regard to who will have the

responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly defined, and a degree of flexibility is required— this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

- c. Deliverables and Reports Requirements:** The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the unit/division well informed and not forcing consultants to spend an excessive amount of time preparing minor reports. The ToR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports. For all major reports, an executive summary is recommended as a separate section. Depending on the assignment, the following reports are usually required;
- 1. Inception Report:** This report should be submitted about six weeks after the commencement date. Any major inconsistency in the ToR, staffing problems, or deficiency in unit/division's assistance that have become apparent during this period should be included. The inception report is designed to give the unit/division confidence that the assignment can be carried out as planned and as agreed upon in the contract, and should bring to its attention major problems that might affect the direction and progress of the work.
 - 2. Progress Reports:** These reports keep the unit/division regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due. Depending on the assignment, progress reports may be delivered monthly or bimonthly. For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory. For technical assistance and implementation supervision, for instance, construction, progress reports are best submitted monthly. Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule. Photographs with time-stamping are a quick and easy way of conveying the status of a project, and their use in progress reports should be encouraged. For technical assistance services, progress reports also serve as a means of setting out the work program for the following months. Each team member usually contributes to the preparation of the monthly report.
 - 3. Interim Reports:** If the assignment is phased, interim reports are required to inform the unit/division of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, the unit/division should discuss the draft interim reports with consultants in the field. The unit/division should not take more than 15 days to review and approve draft interim reports.
 - 4. Final Report:** The final report is due at the completion of the assignment. The unit/division and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the unit/division, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.
- d.** Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.

- e. Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and a reality check is necessary, while preparing this statement.
- f. **Estimating Costs:** The estimated cost can be arrived from getting budgetary offers from prospective bidder, last finalized rate for similar services. The reimbursable like travel, accommodation etc. can be minimized by utilizing the company guest house wherever possible and going for low-cost air travel or travel by train in 2nd AC.

4.2 Finalizing and Approval of the ToR

The scope of the work described in the ToR shall be compatible with the available budget/business prospective. The most important step is to determine whether all tasks required to achieve the desired output have been included in the ToR. The next step is to determine whether adequate budget has been allocated to implement the ToR as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable ToR is formulated. CA's (Competent Authority) approval is required and it should be routed through the concerned department and/or TC members and unit/divisional head for the ToR before proceeding ahead. After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the CA for inclusion in the Revised Estimate stage of Budget. Procurement may be initiated only after such budgetary provisions/confirmations.

4.3 e-Procurement

- i. Electronic 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.
- ii. These instructions will not apply to procurements made through Government e-Marketplace (GeM).

5. Shortlisting Stage in Procurement of Consultancy Services

5.1 Shortlisting of qualified consultants – Expression of Interest (EoI)

- i. 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. In the first stage of procurement, the qualified firms are shortlisted transparently. In the second stage Request for Proposals (RfP) containing Technical and Financial Bids is invited from such shortlisted bidders to select the winning bidder. Care should be taken to avoid formation of unreasonable qualification criteria before shortlisting of consultants that may lead to restricted participation.

Unlike Procurement of Consultancy Services, procurement of other (non-consultancy) Services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage (RfP) Process. In procurements above INR 10 Lakhs, it should normally be an advertised RfP. For procurement below INR 10 Lakhs, RfP can be issued to a selected shortlist of likely service providers.

- ii. (Rule 183 (ii) of GFR 2017) For procurement above INR 25 Lakhs shortlisting is done in an openly advertised competitive shortlisting process called Expression of Interest (EoI), giving equal opportunity to all interested bidders to be considered for shortlisting. Under EoI the "Request for Expression of Interest" (REoI) to be advertised on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in, on Government E-Market (GeM) and company's website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. A complete ToR should be ready before requesting EoI. The attention of known reputed consultants may also be separately drawn wherever possible. The advertisement must include, among other things, the last date of submission of EoI, how to get/download copy of the EoI document including ToR, contact information of the purchasing unit/division with the name of contact person, and so on.
- iii. **No Global Tender Enquiry (GTE) up to INR 200 crores** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where the Company feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure.
 - a. The proposal for approval shall be submitted by Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisation (e.g. autonomous bodies, Central Public Sector Undertakings and subordinate offices of Central Government etc.) will not be entertained.
 - b. The proposals shall be submitted along with duly filled format.
 - c. The Company has to approach the concerned Ministry/department for according the approval Department of Expenditure.
- iv. Before sending the proposals for approvals of the Global Tenders, following is to be ensured:-
 - a. Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, if the Company has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05. 2020. These details shall cover tender number, date of

opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.

- b. The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
- c. The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

v. Exemptions/ Clarifications

- a. For procurement of specialised equipments required for research purposes, and spares and consumables, for such equipments up to INR 200 crore for the use of Educational and Research Institutes. The equipment should be of specialized nature required for research purposes and not the routine equipment used in offices. Approval from the concerned Competent Authority to be accorded before the floating of the tender.
- b. On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases.
- c. On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc. , which are procured from OEM/OES/ OPM on nomination basis, as no competitive tenders are invited in such cases²³.
- d. Where the Company needs to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where procuring entities need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2024.
- e. Exemption to semiconductor.

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

vii. 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. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity.

viii. The EoI document shall contain following sections:

- a. **Letter of Invitation:** It shall include a copy of the advertisement whereby consultants are invited to submit their EoI.
- b. **Instructions to the consultants:** It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;
- c. **Description of Services - Brief Purpose and Scope of Work:** This may include brief purpose/ objective statement; Service Outcomes Statement; broad scope of work including Time-frames; inputs to be provided by the unit/division; and expected deliverables of the assignment. This may also include the place of execution of the assignment. The request for EoI shall not include the

assignment ToR, the consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry.

- d. Qualification Criteria:** This may clearly lay down the qualification criteria which shall be applied by the unit/division for short listing the consultants. The REoI should ask for sufficient information so that the unit/division may evaluate the consultant’s capabilities and eligibility to undertake the assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

5.2 Short List of consultants

- i. The unit/division shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handing similar types of projects, strength of their man power and financial strength of the firm. For example, it is important to find out if the firm: (i) is a small specialised firm or a large firm with access to a pool of expertise; (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and (iii) has appropriate certification in in-house quality control [firm adheres to the requirement of International Organization for Standardization (ISO)] as relevant to the task and has an ethics code in place.
- ii. It is important for the unit/division to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.
- iii. Finally, if the same firm is considered for concurrent assignments (for example, a construction supervision consultant for different stretches/packages of rehabilitation/reconstruction of a road contract), the unit/division shall assess the firm’s overall capacity to perform multiple contracts before including it in more than one short list. However, this needs to be pre-declared in the EoI documents.
- iv. It is seen that the process of shortlisting is one of the most difficult and time consuming tasks in the selection process of a consultant. The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three (Rule 184 of GFR 2017) and generally not more than eight.
- v. The unit/division may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. Normally, the weightages shown in Table may be used for such an evaluation.

Table: Qualification criteria and their weightages

SI No	Criteria	Weightage	
	Sub-criteria	Criteria Total	Sub-criteria
1	Past experience of the consultant (track record)	60%	
	• Number of years’ relevant experience		20%

	<ul style="list-style-type: none"> • Past experience of studies of similar nature • Past experience in carrying out <ul style="list-style-type: none"> • Studies in the related sector • Studies carried out in the region 		50%
			20%
			10%
2	General profile of qualification, experience and number of key staff (not individual CVs)	25%	
	<ul style="list-style-type: none"> • Qualifications • Relevant experience 		30%
			70%
3	Overall financial strength of the consultant in terms of turnover, profitability and cash flow (liquid assets) situation	15%	
	<ul style="list-style-type: none"> • Turnover figure for last three years. • Net Profit Figure for last three years 		50%
			50%
	Total	100%	

vi. The unit/division shall short list all the consultants who secure the minimum required marks [normally 75%]. The minimum qualifying requirement shall be specified in the EoI document.

In EoI, simplified evaluation criteria can also be used, instead of marking schemes as mentioned above. A fail-pass, minimum benchmark in each criteria/sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years experience and must have Master's Qualification in relevant field; Firm must have a turnover of at least INR 10 Crores and so on. Any firm that passes these benchmarks is declared as qualified.

vii. However, this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.

viii. The shortlists shall normally comprise at least three (03) firms but not more than eight (08) (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), for small assignments and indicated in the EoI. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest. RfP documents would be issued only to the shortlisted consultants.

ix. The concerned department/evaluation committee may submit its EoI Evaluation report through CEC/TC members (if required) to CA for approval.

x. It is also noted that while selecting consultants or other services, unit/division are keeping the minimum qualifying turnover at the level of 5-10 times of the estimated cost of the consultancy work. This, prima facie, appears high. Higher qualification criteria increase the likelihood of adequate experience/capacity, but reduce the competition; if set unduly high they may increase the cost without any improvement in quality. **It is suggested that the criteria should be fixed on a reasonable basis while drafting tender documents and such higher minimum qualifying turnover should be kept only, if adequately justified.**

6. Selection of consultants by Competitive Process

6.1 The evaluation process

The selection process for consultants generally includes the following steps:

- i. Preparation and issuance of the Request for Proposals (RfP);
- ii. Pre-proposal meeting;
- iii. Receipt of proposals;
- iv. Evaluation of technical proposals: consideration of quality;
- v. Opening of financial proposals;
- vi. Evaluation of financial proposals;
- vii. Selection of the winning proposal;
- viii. Negotiations with the selected bidder, if required; and
- ix. Award of the contract to the selected firm.

6.2 Preparation and Issuance of the Request for Proposals (RfP)

- i. The Request for Proposals (RfP) is the bidding document in which the technical and financial proposals from the consultants are obtained. For procurement of Consultancy Services, the RfP is sent only to the short listed consultants. *In procurement of other (non-consultancy) Services, since the procurement is done without EoI, RfP is advertised, except in case when value of procurement is less than INR 10 Lakhs. It contains the following sections:*
 - a. A letter of invitation (LoI);
 - b. Information to consultants (ITC) and data sheet (which contains assignment specific information);
 - c. Terms of Reference (ToR);
 - d. List of key experts required for the assignment;
 - e. Requirement of qualifications and experience of the firm and key experts;
 - f. Criteria of proposal evaluation and selection procedure;
 - g. Standard formats for the technical proposal;
 - h. Standard formats for the financial proposal; and
 - i. Proposed form of the contract, including General Conditions of Contract and Special Conditions of Contract;
 - j. Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.

The unit/division shall use the applicable standard RfP with minimal changes as necessary to address project-specific issues. The unit/division may use e-procurement platform to issue RfP.

- ii. **Simplified Technical Proposal:** In LCS system of evaluation, since the technical scores are not ranked or weighted and added to Financial Scores, it would suffice if instead of a detailed marking scheme for the criteria/sub criteria, minimum fail-pass qualifying benchmarks are laid down for each criteria/sub criteria. For such assignment technical evaluation can be carried out by following a simplified procedure for evaluation of technical quality and only a Simplified Technical Proposal (STP, instead of a Full Technical Proposal - FTP) may be called for and indicated in the data sheet of the RfP document. STP should be used. when the assignment is: (i) unlikely to have significant downstream impact; (ii) of a routine nature where ToR already defines details of tasks to be performed and required output and approach, methodology, organisation and staffing could be evaluated without use of sub criteria; and (iii) that characteristics of work do not require further detailed evaluation of the consultant's experience (e.g. engagement of accountants, auditors, consultant engineers etc). STP reduces the time and cost

required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example, following parameters can be used:

- a. Minimum experience including number of assignments handled by the firm similar to the area of assignment;
- b. Turnover and other financial parameters of the firm, if required;
- c. Minimum educational qualifications of each of the key professionals;
- d. Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.

All the firms which meet the minimum qualifying standards/criteria so prescribed will stand technically qualified for consideration of their financial bids.

- iii. **Letter of Invitation (LoI):** The Letter of Invitation (LoI) shall state the intention of the unit/division to enter into a contract for the provision of consultancy services, details of the unit/division, and date, time, and address for submission of proposals
- iv. **Instructions to consultants (ITC):** The Instructions to consultants (ITC) shall consist of two parts: (1) standard information; and (2) assignment specific information. The assignment specific information is added through the data sheet. The ITC contains all necessary information that would help the consultants prepare responsive proposals, and shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on.

Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection), but shall indicate the expected input of key professionals (staff time). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period [normally 60 days].

v. **Standard Formats for Technical and Financial Proposals**

- a. The standard formats for technical proposals include those specified for FTP or STP:
 1. Technical proposal submission form (including declaration on conflict of interest, eligibility, following Code of Integrity in Public Procurement - CIPP);
 2. For a JV, a LoI or copy of existing agreement, as applicable;
 3. Power of attorney (in case of a JV, lead member to be authorised);
 4. Consultant's organisation and experience (for FTP only);
 5. Comments and suggestions on ToR, counterpart staff and facilities to be provided by the client (for FTP only);
 6. Description of approach and methodology and work plan for performing the assignment;
 7. Work schedule and planning for deliverables; and
 8. Team composition, key expert's inputs, attached CVs.
 9. Format for Comments/modifications suggested on proposed form of contract.
- b. The standard formats for a financial proposal include:
 1. Financial proposal form;

2. A summary sheet of the cost to be quoted by the Bidder;
3. Remuneration payable; and
4. Reimbursable expenses

vi. **Important Provisions of RfP/ Contracts**

- a. **Currency:** Under normal circumstances, all the contracts should be based on Indian Rupees only. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RfP. If RfP allows proposals in any other currency, the date and the exchange rate (normally date of opening of the Technical Bid) for converting all the bid prices to Indian Rupees shall be indicated in RfP
- b. **Payment Provisions:** Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in RfP and also in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).

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

1. Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.
2. Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.

Such advance payments should not exceed the following limits :

1. 30% of the contract value to private firms;
 2. 40% of the contract value to a State or Central Government agency or a Public Sector Undertaking;
 3. In case of maintenance contract, the amount should not exceed the amount payable for 06 months under the contract.
- c. **Bid Securities or EMD (Rule 170 of GFR 2017):** Normally in procurement of consultancy services, it is not a practice to ask for Bid Security. However, unit/division has the option of requiring a bid security in time-critical procurements. When used, to safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Central Purchase Organisation or the concerned Ministry of Department or Startups as recognized by Department of Industrial Policy & Promotion (DIPP).

The details of asking the Bid Security/EMD in the bid or tender should be as per norms mentioned in the Manual for Procurement of Goods.

1. **Performance Security (Rule 171 of GFR 2017):** To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Performance security should be for an amount of 5% to 10% of the value of the contract as specified in the bid documents.]. Performance security may be furnished in the form of an Insurance Surety Bond, account payee

demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities. Submission of Performance Security is not necessary for a contract value upto INR 01 Lakh. Bank guarantees, either received in physical form or electronic form, should be verified for its genuineness following the prescribed method for the same and the unit/division should do due diligence on genuineness of the Bank Guarantees before acceptance of the same.

2. Performance Security is to be furnished by a specified date (generally 14 days after notification of the award) and it should remain valid for a period of 60 days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
 3. The performance security will be forfeited and credited to the unit/division's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after they duly performs and completes the contract in all respects but not later than 60 days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so make the process transparent and visible.
 4. As per Rule 172 (1) of General Financial Rules (GFRs) 2017, ordinarily payment for services rendered or supplies made should be released only after the services have been rendered or supplies have been made. The rule further provides for advance payment in case of maintenance contracts and fabrication contracts keeping adequate safeguards in the form of obtaining Bank Guarantees (BGs) from the firms.
- d. **Conflict of Interest:** The consultant shall not receive any other remuneration from any source in connection with the same assignment except as provided under the contract. Consultants assisting a client in privatization of public assets shall neither purchase nor advise purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict of interest situation as described in the RfP/contract.
- e. **Professional Liability:** The consultant is expected to carry out their assignment with due diligence and in accordance with the prevailing standards of the profession. As the consultant's liability to the unit/division will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct; (b) the consultant's liability to the unit/division may, in no case, be limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the Procuring Entity and not with the consultant's liability toward third parties.
- f. **Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes – applicable Arbitration Clause and procedures.

- g. **Training or Transfer of Knowledge:** If the assignment includes an important component of training or transfer of knowledge to the unit/division's staff, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training programme shall be explicitly stated in the consultant's contract and in the budget for the assignment.

(Rule 186 of GFR 2017)

h. **Tender Documents:**

1. The tender document is the fundamental document in the procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the unit/division and the suppliers timeframe/milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises.
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.
3. Unit/division may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.
4. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
5. Technical and Financial Eligibility Criteria for the bidders are important in the 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.
6. Open online tendering should be the default method to ensure efficiency of procurement. The experience criteria should also be kept broad based so that bidders with experience in similar nature of items/ goods can participate.
7. Pre-bid conference may be conducted for large value tenders by unit/division. The Place and time of pre-bid conferences should be mentioned in the tender document and/or publicized through the website of the Company and/ or through newspaper publication.

6.3 Pre-proposal Meeting

- i. In all cases of large value or complex assignments, a pre-proposal meeting may be prescribed in the RfP. The date and time for such a meeting should normally be after 15 to 30 days of issue of the RfP and should be specified in the RfP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the RfP as a result of the pre-bid meeting or otherwise considered necessary by the Procuring Entity, a formal corrigendum to the RfP may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 days) is

available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.

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

6.4 Receipt of Proposal

The unit/division should allow enough time for the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than two weeks (minimum 10 days in GeM, approval to be taken from the CA citing proper justification) and not more than three months. In cases where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed. If necessary, the unit/division shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope. The technical bids will be opened immediately after closing of receipt of technical bids by the Consultancy Evaluation Committee (CEC). The financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically. Any proposal received after the closing time for submission of proposals (Late Bids) shall not be considered (Rule 188 of GFR 2017) and shall be returned unopened. Report of Bid-opening may be prepared as per Annexure 7. It may be noted that as per guidelines, now all procurement is to be done through e-Procurement. (Rule 187 of GFR 2017).

6.5 Consultancy Evaluation Committee (CEC)

- i. For all cases having financial implications of more than INR 10 lakh, a Consultancy Evaluation Committee (CEC), comprising of normally three members including Financial Adviser or his representative and a representative of the user, shall be constituted as per DoP, in order to carry out the consultant selection procedure. The CEC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. The CEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations and final selection of the consultant. There no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. Even in case of selection of a consultant by direct negotiations having financial implications of more than INR 10 lakh, the CEC shall negotiate with the consultant on technical and financial aspects.
- ii. The representative of the user Department will work as a convener of the CEC. He shall distribute the RfP to the CEC members and request them to familiarize themselves with the characteristics and requirements of the assignment, the selection procedures, and the evaluation criteria and sub-criteria. The convener of the CEC should also call meeting of the CEC members to review any questions they may have on the evaluation principles, procedures, and objectives etc.
- iii. Technical proposals for consultancy services are an intellectual product. Their evaluation must be based on individual professional judgement of competent evaluators and should not be reduced to a purely arithmetical exercise. The difficulty is to ensure that this judgement is not exercised unreasonably or arbitrarily. It is important that subjectivity, implicit to any individual professional judgement, be

complemented by transparency, consistency, and fairness. The individual evaluator entrusted with the evaluation, when required, should be able to explain to the satisfaction of a qualified reviewer from the higher authority or to enforcement agencies the reason for his/her scoring and recommendation. One way to achieve this objective is by adopting a rating/grading system for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.

- iv. After the review meeting, the CEC meets again to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the Data Sheet. To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion. Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP. The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of the CEC’s knowledge of the opened proposal contents. It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, CEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and sub-criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:
 - a. Evaluators may differ, even widely, in their definition, understanding, or interpretation of the same criterion and also because of their subjective experience and understanding of the ToR;
 - b. Disparities in evaluators’ relative generosity or severity in judgment and ratings can easily be magnified by the lack of common definitions of the requirements to be considered for each criterion and sub-criterion;
 - c. Large differences in scores caused by inadequate understanding of the ToR or improper use of the evaluation criteria and sub-criteria are difficult to reconcile and explain.

- v. Before starting the evaluation, the CEC members should ensure that they
 - a. have no conflict of interest;
 - b. understand the rating and scoring system;
 - c. have been provided with evaluation worksheets; and
 - d. Agree on how to evaluate the proposals.

- vi. After the rating system has been defined and proposals have been opened, the evaluation process can begin. Members of the CEC should not engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.
- vii. Precise and exact markings of criteria and sub-criteria specified in technical evaluation (especially of unquantifiable criteria e.g. evaluation of Methodology) may neither be feasible nor warranted, especially when there is bound to be variation among marks by different members of CEC. Instead of assigning marks over the full range of attributes, it is more appropriate to divide the range into 4-5 slabs of ratings. A possible example of rating could be:

Rating	Assessment	Detailed Evaluation, in case of unquantifiable Criteria	Marks
A	Very Good	The service providers have outstanding, advanced expertise in specific problem areas of the assignment that can promise an excellent execution of the assignment. The service providers’ staff includes top experts in the field of the assignment. The service providers are	Full Marks

		considered world-class specialists in the approaches and methodologies dealing with specific issues in the assignment. The service providers operate according to well-established Quality Management (ISO 9002 etc.) Procedures.	
B	Good	The service providers have extensive experience in the field of the assignment and have worked in Regions and Sectors with similar physical and institutional conditions, including similar critical issues. Permanent staff are adequate and highly qualified to cover the requirements of the assignment. The service providers have experience with advanced approaches and methodologies for dealing with the specific	80% of full Marks
C	Satisfactory	The service providers have experience in the field of assignments similar to the one being considered, but have not dealt with critical issues specific to it (such as, for instance, delicate social or environmental issues). The service providers are experienced in the use of standard approaches and methodologies required for the assignment. The service providers' permanent staff are adequate.	60% of full Marks
D	Unsatisfactory	The service provider has experience which is not considered adequate for the quality needed by the Project.	30% of full Marks
E	Not Relevant	The service provider' experience has no or little relevance to the Project under consideration	10% of full Marks

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

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

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

In cases where the CA does not agree with the majority or unanimous recommendations of the CEC, he should record his views and, if possible, firstly send it back to CEC to reconsider along the lines of the tender accepting authority's views. However, if the CEC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare. (Rule 189 of GFR 2017)

x. ***If in any case CEC team is not formed, then the Tender Committee will act as CEC.***

6.6 First Stage of Evaluation: Consideration of Responsiveness

Member of the CEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR or other key requirements of the RfP; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation. Proposals without EMD (bid security), unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the ToR fully and properly and those with lesser validity than that prescribed in the RfP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality. CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects as described in the RfP. A technical proposal containing any material financial information shall also be rejected.

6.7 Evaluation of the Quality – Technical Proposals

i. In the second stage evaluation process CEC members shall apply the criteria and sub-criteria set forth in the Data Sheet. Each proposal should be judged on its own merits and assigned an absolute - not comparative -grade. A comparative evaluation would single out the best proposal on a relative scale, but still could leave the unit/division with a poor proposal. Instead, the evaluation should measure absolute quality scored against predefined criteria and sub-criteria. The unit/division shall evaluate each technical proposal taking into account criteria as prescribed in the RfP: (a) the consultant's relevant experience for the assignment; (b) the quality of the methodology proposed; (c) the qualifications of the key staff proposed; and (d) capability for transfer of knowledge (if relevant). Each of the technical proposals will be evaluated for the criteria prescribed in the RfP by awarding marks so as to make the total maximum technical score of 100 (one hundred). The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum/minimum marks in terms of percentage is, however, proposed in Table below.

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

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

Note: * If this criterion is not required, the marks can be adjusted against some other criteria.

- ii. CEC members should carry out the evaluation independently and score the proposal based on the rating criteria.
- iii. The CEC evaluation should be based on the proposal as submitted. Under no circumstances can the CEC request information or clarifications that may change the proposals. Issues to be clarified with the selected consultant will have to be discussed during negotiations. Individual evaluators' results are recorded on pre-established worksheets. After each member has independently rated all criteria and sub-criteria, it is good practice to read each proposal again to ensure that scores reliably reflect the quality of the proposal.
- iv. Next, the CEC should conduct a joint review and discuss the merits of individual evaluations and scores. Some evaluators tend to be generous while others will be rigid in their judgment and ratings. Such disparity does not matter, provided each evaluator is consistent and differences in scores are not too large. Large differences should be reviewed and explained; because they often are caused by improper or inaccurate use of the rating system. Reconciling differences that are considered too large by the CEC may result in members revising some of their ratings and scores. As such, any changes should be recorded. If a discussion is needed to reach a final decision, an independent party should prepare minutes. Finally, the scores given by different members may be averaged out. During the meeting, the CEC should also comment on the strengths and weaknesses of all proposals that have met the minimum technical score indicated in the RfP. This will help identify any elements in the winning proposal that should be clarified during negotiations.
- v. Eventually, for each of the technical proposals, the CEC should calculate the average of the scores allocated to each criterion by all members, establish the technical ranking of the proposals, identify the best, and propose it for award. The evaluation also establishes whether a proposal passes the minimum qualifying mark (or technical score, normally 75) provided for in the RfP. If one or more proposals fail to meet the minimum qualifying mark, both individual and joint assessments must be carefully reviewed and justified. Short-listed consultants are usually discouraged when their proposals are rejected, particularly when they are only a few points below the minimum mark; therefore, the unit/division should be prepared to debrief consultants to explain the evaluation of their proposals.
- vi. At the end of the technical evaluation process, the CEC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval. For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the RfP and comment on their acceptability. This committee shall record in details the reasons for acceptance or rejection of the bids analysed and evaluated by it. The CA may ask the CEC to explain the report, but should not request that scores be changed. It should review the CEC's evaluation of each proposal (on technical, contractual, and other aspects). The CA should decide how any acceptable deviation in each proposal should be handled during negotiations, in case that proposal is ranked first. The technical evaluation report is a confidential document, and its contents shall not be disclosed. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit. A sample format for preparation of technical evaluation report and financial evaluation report including award recommendation to the competent authority is given at Annexure 5.
- vii. Only consultants qualifying as per the technical evaluation criteria will be considered as eligible for the consultancy assignment. All the firms which meet the minimum qualifying standards/criteria so prescribed will stand technically qualified for consideration of their financial bids.

6.8 Evaluation of Cost

- i. After evaluation of quality has been completed, the unit/division shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process. In case of QCBS, the unit/division shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. The financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. The unit/division shall prepare the minutes of this opening. When electronic submission of proposals is used, this information shall be posted online.
- ii. For a time-based contract, any arithmetical errors shall be corrected and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in their financial proposal so neither arithmetical correction nor any other price adjustment shall be made. For QCBS, the proposal with the lowest offered total price shall be given a financial score of 100% and other financial proposals given scores that are inversely proportional to their prices. This methodology shall be specified in the RfP document.
- iii. For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RfP. The CEC shall make this conversion by using the BC selling exchange rates for those currencies as per the exchange rate quoted by an official source, for example, the State Bank of India. The RfP shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for comparison of costs. This date shall be the date of opening of technical bids.
- iv. For the purpose of evaluation, the total cost shall include all taxes and duties for which the unit/division makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the RfP document.
- v. An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Unit/division may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, the unit/division determines that the Bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the unit/division may reject the Bid/Proposal. However, it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

6.9 Selection of the winning consultant

Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible.

- i. **LCS Selection:** Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The CEC will put up a report on financial evaluation of the technically qualified consultants to the Competent Finance Authority/Competent Authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.
- ii. **QCBS Selection (Rule 192 of GFR 2017):** Under QCBS selection, the technical proposals will be allotted weightage of 70% while the financial proposals will be allotted weightages of 30% or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP. Proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer. Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1.

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

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

where

C = Evaluated Bid Price

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

T = the total Technical Score awarded to the Bid

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

X = weightage for the Price as specified in the BDS

The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid

As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 and the weightage of the technical bids and financial bids was kept as 70:30. In response to the RfP, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks

B: 80 Marks

C: 90 Marks

The minimum qualifying marks were 75 thus, all the three proposals were found technically suitable. Using the formula $T/Thigh$, the following technical points are awarded by the evaluation committee:

A: $75/90 = 83$ points B: $80/90 = 89$ points C: $90/90 = 100$ points

The financial proposals of each qualified consultant were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

A: INR 120.

B: INR 100.

C: INR 110.

Using the formula C_{low}/C , the committee gave them the following points for financial proposals:

A: $100/120 = 83$ points B: $100/100 = 100$ points C: $100/110 = 91$ points

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A: $83 \times 0.30 + 83 \times 0.70 = 83$ points. Proposal B: $100 \times 0.30 + 89 \times 0.70 = 92.3$ points Proposal C: $91 \times 0.30 + 100 \times 0.70 = 97.3$ points.

The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A: 83 points: H-3 Proposal B: 92.3 points: H-2 Proposal C: 97.3 points: H-1

Proposal C at the evaluated cost of INR 110 was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

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

6.10 Negotiations and Award of Contract

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

6.11 Rejection of All Proposals, and Re-invitation

The unit/division will have the right to reject all proposals. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the ToR or considered unreasonably high in cost and, if in the latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to re-invite the bids, the ToR should be critically reviewed/modified so as to address the reasons of not receiving any acceptable bid in the earlier Invitation for bids.

6.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm, except that after technical evaluation, the overall technical score shall be informed to all consultants for each criterion or sub-criterion, if any, as required by RfP document

7. Special Types of Engagements

7.1 Single Source Selection (SSS)

Selection of consultants/service providers through direct negotiations does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. The reasons for SSS and selection of a particular consultant must be recorded and approved by the CA as per the DOP of the Company, prior to single tendering. Powers of procurement of SSS must be severely restricted. Therefore, single-source selection shall be used only in exceptional circumstance, where it is inescapable over competitive selections as discussed in sub-paras below.

When in a Project, continuity for downstream work is essential, the initial RfP shall outline this prospect, and, if practical, the factors used for the selection of the consultant/service provider should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant/service provider may make continuation with the initial consultant/service provider preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the unit/division shall ask the initially selected consultant/ service provider to prepare technical and financial proposals on the basis of ToR furnished by the unit/division, which shall then be negotiated.

If the initial assignment was not awarded on a competitive basis or if the downstream assignment is substantially larger in value, a competitive process shall normally be followed in which the consultant/ service provider carrying out the initial work is not excluded from consideration if it expresses interest.

For selecting a consultant/service provider under this method, the concerned personnel/department should prepare a full justification and get it be routed the TC member and unit/divisional head for the approval of the competent authority as per the Delegation of Powers.

While selecting the consultant/ service provider under this method, the unit/division shall ensure that the consultant/service provider has the requisite qualification and experience to undertake the assignment. Normally the unit/division shall adopt the same short listing criteria as applied to similar assignments while evaluating the EoI.

7.2 Selection of Individual consultants/ service providers

- i. Individual consultants/service providers are normally employed on assignments for which
 - a. Teams of personnel are not required;
 - b. No additional outside professional support is required, and
 - c. The experience and qualifications of the individual are the paramount requirement.
- ii. The procedures for selecting individual consultants/ service providers are similar to, but much simpler than, those for selecting teams of consultants/ service providers from a firm. Process of selection of Individual consultants/ service providers entails:
 - a. Preparing a Consultancy and other services package including the ToR, time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the CA;
 - b. **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in, on Government E-Market (GeM) and the Company's website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.

- c. **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the unit/division. Candidates who are already employed with the unit/division shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged based on academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the CEC which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment. The CEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

- d. **Direct Negotiation:** Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as (a) tasks that are a continuation of previous work that the consultant/service provider has carried out and for which the consultant/service provider was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only consultant service provider qualified for the assignment. Individual consultants/service providers may be (among others) independent consultants/service providers; consultants/service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies.

7.3 Selection of Specialized Agencies/ Institutions

- i. From time to time, unit/division may need to recruit a specialized agency to undertake a specific task for which it is particularly well suited. Such agencies may be Government/Semi-Government Agencies/Professional Institutions.
- ii. In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on an SSS basis. In such cases, there must be full justification that the use of SSS is in the best interests of the unit/division.
- iii. In cases, of Government and semi-Government Agency SSS would be an appropriate method of recruitment.
- iv. Individual consultants/service providers recruited from agencies and institutions may be selected in the same way as any other independent consultants/service providers.

7.4 Financial Advisors

- i. Unit/division may hire financial institutions to implement two main types of assignment:
 - a. in the preparation of studies and financial Consultancy; or
 - b. As advisers on financial restructuring, M&A or demerger etc.
- ii. In the first case, the advisers can be selected under any of the methods described in this chapter (that is, whichever is considered most suitable, depending on the scope of work of the assignment). In the second case, QCBS shall be adopted, whereby the RfP specifies technical evaluation criteria similar to those relevant to standard Consultancy assignments. The financial proposal would include two distinct forms of remuneration:
 - a. a lump-sum retainer fee to reimburse the consultant/service providers for services made available; and
 - b. A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.

iii. Depending on the type of activity under 7.3.(i) and the circumstances of the unit/division, the RfP specifies the relative weights assigned in the financial evaluation to the retainer and to the success fee, respectively. In some cases, the unit/division offers a fixed retainer fee, and the consultant/service providers must compete only on the success fee as a percentage of the value of the privatization transaction. For QCBS (notably for large contracts), cost may be given a weight higher than recommended for standard assignments (such as 30%), or the selection may be based on LCS selection. The RfP shall specify clearly how proposals will be presented and how they will be compared. Success fees are most appropriate when it is relatively easy to measure results in meeting the unit/division's objective (successful sale of assets) and when the success is at least partly related to the efforts of the consultant/service providers involved. Therefore, success fees are more likely to be adopted at the transaction stage, because by that time the unit/division's objective is to maximize revenue.

7.5 Auditors

Auditors typically carry out auditing tasks under well-defined ToR and professional standards. They shall be selected according to LCS system, with cost as a selection factor.

8. Monitoring Consultancy/Other services Contract

8.1 Monitoring of the Contract

The unit/division 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 unit/division'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. The concerned department/personnel shall monitor the progress. (Rule 195 of GFR 2017)

8.2 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 unit/division, if so required under the description of services. The unit/division and the consultant/ service provider agree on the detailed content of inception, progress and final report.

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

- i. Supervising/monitoring arrangements are in place;
- ii. Unit/divisions' counterpart staff are nominated and are available;
- iii. Facilities to be provided by the unit/division 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

8.3 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. Concerned personnel/department 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.

8.4 Monitoring a Time-based Contract

As indicated earlier, the performance of a time-based contract may depend on the progress in other contracts (for example, the progress of a construction supervision contract depends on the progress of a

construction contract). In such situations, the mobilisation and demobilisation of resources/key experts and time employed by them should be mobilised and monitored carefully as it is possible that the contract period and the total amount under the contract are spent fully and construction work being supervised is not even half complete. These situations could lead to claims and disputes.

8.5 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 15% of its original order value.

8.6 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 unit/division 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 unit/division 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.

8.7 Delays

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

8.8 Issuing Contract Variations

- i. 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 unit/division. If the variation entails an increase in the contract amount by more than 10%, CA's (Competent Authority) prior approval is required.
- ii. 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 unit/division due to lack of available options. Generally, the value of the change request should not be more than $\pm 15\%$. The RfP document should contain detailed mechanism through which such change requests would be carried

out. Proposal to be routed through the TC members for the final approval of the CA. The decisions of this board (both technical as well as financial) should be considered as final.

8.9 Substitution of Named Key Personnel

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

- ii. Substitution of key personnel during execution of consultancy contract:
 - a. Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.
 - b. The following conditions should be incorporated in tender documents for procurement of consultancy services:
 1. 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 unit/division.
 2. 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.
 3. In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% and for the third 10% replacement such reduction may be equal to (say) 15%. In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the unit/division 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.

8.10 Billing and Payments

- i. 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 unit/division detailing the expenditures. The concerned personnel/department then review the documentation and forwards it to finance department for ultimate payment. In normal practice, if any item needs further scrutiny before the unit/division can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.
- ii. 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 unit/division 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.

8.11 Disputes and Conflicts

- i. 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 unit/division; 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 unit/division.
- ii. 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 concerned unit/division) 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 unit/division. Finally, if the dispute cannot be amicably settled between the consultant/service provider and the unit/division, then provision is made for arbitration under the Arbitration Clause. The award decreed by arbitration tribunal is binding.

8.12 Force Majeure

- i. 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 unit/division only. In such a situation, the purchase unit/division 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 days, either party may at its option terminate the contract without any financial repercussion on either side.
- ii. 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.

8.13 Terminating Services Prior to End of Contract

- i. 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:
 - a. Termination due to External factors: External factors (like natural disasters) which are beyond the control of the consultant/service provider or the unit/division;
 - b. Termination for convenience: The unit/division may also terminate a contract for convenience for reasons like shortage of budget;

- c. Termination due to breach of contract: Failure/ inability of one party or the other.
- ii. 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.
- iii. 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 days, the payment by the unit/division 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).
- iv. The concerned personnel/department 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.

8.14 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 claim must be submitted within 60 days of completion.

9. Procurement (Outsourcing) of Other (Non-consultancy) services

9.1 Applicable for Procurement (Outsourcing) of Other (Non-consultancy) Services

- i. "Other services" (including the term 'Non-consultancy services' in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and forwarding; courier services; upkeep and maintenance of office/buildings/Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping & similar operations etc.
- ii. The term "Outsourcing of Services" implies deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of unit/division (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/Housekeeping Services, Errand/ Messenger Services, and so forth). There may be Human Resources and Administrative issues involved in 'outsourcing' which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, other services also include procurement of short-term stand-alone services.
- iii. If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled on the lines of procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled on the lines of Procurement of Goods.
- iv. Any circumstance which is not covered in this chapter for procurement of non-consulting services, the unit/division may refer to the Manual of Policies and Procedures for Procurement of Goods.
- v. It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory part of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode.
- vi. For sake of simplicity, this Manual of Policies and Procedure for the Procurement of Consultancy and other services is written from the point of view of procurement of Consultancy Services. This Chapter now covers the Outsourcing/Procurement of Other (non-consultancy) Services, and points out areas where policies and procedures are different for such outsourcing/procurements.

9.2 When is Procurement/ Outsourcing of Other (Non-consultancy) Services justified

In the interest of economy, efficiency and to provide more effective delivery of services, GFR, 2017 permits unit/division to procure/outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

- i. Economy, Speed and efficiency and more effective delivery of services relating to additional requirement/ commitment/ usage of:
 - a. Staff/ Management/ Organization;

- b. Technological and Material Resources;
 - c. Money, and
 - d. Time/ Speed of execution
- ii. An administrative policy decided by the Company to outsource specific (class of) services;

9.3 Principles for Procurement of other (non-consultancy) services

- i. Other principles of Procurement as mentioned in chapter-1, are also equally applicable to Procurement of other services. Additional principles of procurement needed to ensure value for money in of procurement of other services are to ensure:
- a. Services to be procured should be justifiable in accordance with Chapter-1;
 - b. In other (non-consultancy) services an 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 the unit/division;
 - c. Equal opportunity to all qualified service providers to compete should be ensured
 - d. Engagements should be economical and efficient; and
 - e. Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards);
- ii. **Period of Contract:** A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Therefore, in the normal course, the period of initial contract may be fixed normally for two years.
- iii. **Extension of Contract:** The clause of extension of contract beyond the period of two years may be for a further period of one-year subject to the service provider providing satisfactory service. Thereafter fresh bidding for new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5% of the total contract value, extension beyond the initial period of two years may not be considered.
- iv. **Instances of Multiple L1s:** In number of cases, especially non-consultancy services, usually multiple bidders emerge as L1. GeM provides following two options to choose the vendor to be engaged in case of multiple L1s:
- a. system determined vendor selection.
 - b. purchaser can select the vendor.
- Multiple factors may weigh upon the decision of selecting the successful contractor. GeM system based selection could be more transparent, however, it takes away the discretion with purchaser to select a particular contractor, without any financial repercussion, on the basis of past experience in a particular department. On the other hand, there may be instances where a unit/division may be more comfortable with system based L1 selection method. Hence, the decision on the method of selection of successful contractor in case of multiple L1 may be left with the unit/division. However, the method of selection of successful contractor in case of multiple L1 should be decided prior to issue of tender.
- v. **Past Experience:** Bid documents may provide for a qualification criteria considering past experience. Normally past experience in supply of service at a particular station or to Central Government Ministries/ Departments is considered too restrictive. However, in case such restriction is considered essential the same may be provided for in the bid documents, duly recording reasons for such decisions on the file.

- vi. **Housekeeping Services:** In the case of Housekeeping/ cleaning services, GeM platform provides for Options based on (a) Floor Area wise cleaning and (b) Manpower. Usually, the floor area wise cleaning option is more cost effective. Accordingly, before a tender is floated, an exercise maybe undertaken to determine the option which is considered beneficial for the Company, duly recording reasons for such decision on file.
- vii. Hiring of manpower through contracts should be avoided to ensure no future legal problems as these employees may demand regularization afterwards. Even, if employed, there should be no direct correspondence with such people. Even I-cards should be issued indicating the person to be representative of the contractor (name of the contractor to be mentioned).

9.4 Types of Contracts in Other (Non-consultancy) Services

Procurement/Outsourcing of other (non-consulting) services depending on the nature of services can be either Lump-sum contracts, Time-based contracts, or unit (item/service) rate based contract (as in case of Goods and Works - say Taxi Service on Km basis). Or it can be a mix of these. For occasionally but continually 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.

9.5 System of Selection in Other (Non-consultancy) Services

- i. Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. (Rule 206 of GFR 2017). It is normally done in a Single Stage (RfP) Process containing Technical and Financial bids. However, in highly technical and complex services, where quality is important (say in studies like airborne data acquisition etc) a pre-qualification (PQB) process may be done on the lines of procurement of Goods and Works.
- ii. In procurements above INR 10 Lakhs, it should normally be an advertised RfP. For procurement below INR 10 Lakhs, RfP can be issued to a selected shortlist of likely service providers. To smoothen this shortlisting of service providers for projects below INR 10 Lakhs, the unit/division, may consider preparation of a panel of qualified service providers, after evaluation of their credentials, on the lines of registration/empanelment of vendors in procurement of goods. (Rule 201 of GFR 2017)
- iii. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis among the technically responsive offers, as in the procurement of goods/works. Under very special circumstances Single Source Selection may also be used. (Rule 204 of GFR 2017)

9.6 One Stop Government e-Marketplace (GeM)

- i. An online marketplace (or e-commerce marketplace) is a type of e-commerce site where product or services are offered by a number of sellers and all the buyers can select the product/services offered by any one of the seller, based on his own criteria. In an online marketplace, purchaser's transactions are processed by the marketplace operator and then product/services are delivered and fulfilled directly by the participating retailers. Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting of requirements by purchasers, payment gateways etc. In general, because online marketplaces aggregate products from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail stores.
- ii. Ministry of Commerce have developed an online Government e-Market Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic

and online. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM.

iii. Products and services are listed on GeM by various suppliers as on other e-Commerce portals: The registration of suppliers on GeM is online and automatic based on PAN, MCA-2143, Aadhar authentication etc. The suppliers offer their products on GeM and the Government buyer are able to view all the products as well as compare them. Tools of reverse bidding and e-auction are also available which can be utilised for the procurement of bulk quantities.

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

“Government e-Market Place (GeM): Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under

- a. Up to {INR 25,000/-} through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be INR 30 lakh instead of INR 25,000/-)
- b. Above INR 25,000/- and up to INR 5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of INR 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than INR 5,00,000.
- c. Above INR 5,00,000/- through the supplier having lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where current limit of INR 30 lakh will continue).
- d. *The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.*
- e. The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.
- f. The unit/division shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.
- g. The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department’s own Last Purchase Price etc.
- h. A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying/ bidding/ reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required concerning the estimated value of the total demand.”

It may be noted that it is the responsibility of the unit/division to do due diligence for ensuring reasonableness of rates.

9.7 Obtaining Final Administrative and Budgetary Approvals

Before a final administrative and budgetary approval is taken, a detailed Activity Schedule and Cost estimate is required to be prepared in following manner:

i. Activity Schedule and Other Requirements

The objectives of the Activity Schedule are:

- a. To provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
- b. When a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

Besides detailing the activities, quantum and time frame, Activity Schedule should contain the following sections also:

- a. **Description of Services:** A brief description of service required is important information that would help the bidders understand the service requirement. It should cover background about the organisation and about the project/service. The Purpose and Service Outcome statement should be included in the description of services (as finalised for initiating the procurement - Chapter-1) to help the service providers understand the requirement.
- b. **Itemized Activity Schedule:** In order to attain objectives of the Activity Schedule, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of services, or between services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible. All information relevant for the bidder to quote a price may be included e.g. the frequency and quantum and time-frame/duration of completion of activities to be performed. In activity schedule containing scores of items, evaluation can be simplified if the system used in works contracts is borrowed, if feasible, where Schedule of Rates (SoR) for each activity is specified in the bid documents by the unit/division and only percentage +/- above the SoR (separately for different Schedules or combined) is asked to be quoted by the bidders.
- c. **Labour/Personnel Activity Schedule:** If labour/personnel are used in the activity, these may be quantified specifying place, shifts and frequency of utilization in the Activity Schedule. In case any key professionals or Project Manager is required, their qualification and experience required may also be mentioned. Any relievers and leave reserve for deploying the personnel should be included in the rate for such personnel and would not be separately payable.
- d. **Material Schedule:** In case any Materials/Consumables/tools of trade are to be consumed/ deployed, a Separate Materials Schedule should be included, indicating the specification and quantity of such materials/consumables/tools to be consumed/deployed per unit activity/day/ location/per manpower deployed. Price of all these materials/tools etc. is to be shown as a separate lump-sum cost in the financial bid by the bidder.
- e. **Essential Equipment Schedule:** Any essential equipment, machinery (Trucks, Cranes, Washing Machines, Vessels/ rafts, plant and machinery etc.) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel;
- f. **Performance Specifications, Drawings:** The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the activity schedule.

- g. **Statutory and contractual obligations to be complied with by the contractor:** Service provider mostly work within the premises of unit/division, along with staff of unit/division. Many services are subject to various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations etc. The bidder must have Service Tax Number, ESI, EPF Registration Certificate, Registration Declaration of ownership under Indian Registration Act 1908 and Labour License and PAN (Income Tax). Moreover, the unit/division themselves may have its own regulation about safety, security, confidentiality etc. All such statutory and contractual obligations must be listed, so that price implications and compliance is taken care of by the bidder. In case of security services contracts, the bidder must have the valid license to run the business of Private Security Agency in the state issued by the appropriate authority for operating Security Services.
- h. **Facilities and Utilities to be provided by the unit/division to service provider at Site:** It should be mentioned, if any facility/utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc. would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity Water supplied to the service provider, the same may be mentioned, including the rate of charges. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So great care and reality check is necessary while preparing this Statement. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis. It should be mentioned that the service provider will not be allowed to use any of purchasing unit/division’s facility/ area which are not listed in this section.
- i. **Institutional Arrangements and Procedure for Review of Work of consultant after the Award of Contract:** Institutional arrangements like the placement in a Department, name of project manager and chain of command for reporting may be specified. Process of Review of Service Outcomes and deployment of personnel and resources should be clearly brought out.
A template for Activity and other Schedules is given at Annexure 9.

ii. **Estimating Costs:** The estimated cost can be arrived from getting budgetary offers from prospective bidder, last finalized rate for similar services. The reimbursable like travel, accommodation etc. can be minimized by utilizing the company guest house wherever possible and going for low cost air travel or travel by train in 2nd AC.

iii. **Final Administrative and Budgetary Approvals:** The Activity Schedule shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included. The next step is to determine whether adequate budget has been allocated to implement the assignment as designed. Since the budget may be fixed or limited, a series of iterations may be required before a final, acceptable Activity Schedule is formulated. CA's approval may be taken for the Procurement before proceeding ahead. After administrative approval provision may be made in the Budget or if that is not feasible, additional confirmation at the time of seeking Administrative approval may be taken from the CA for inclusion in the Revised Estimate stage of Budget. Indent may be initiated after such budgetary provisions/ confirmations. Procurement should be initiated only after such approvals and budgetary provisions.

9.8 Procedure for Single Source Selection (SSS)

Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the CA’s approval may be taken. In such cases the detailed justification, the circumstances

leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal. Threshold Limits for use of SSS method of Selection may be prescribed in DoP.

9.9 Procedure for small value and emergency Procurements of Other (Non-consultancy) Services

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective process for the unit/division. For procurement upto INR 25,000, the 'Direct Procurement without Quotation' mode of procurement used in procurement of goods may very well be utilised in such cases. Similarly, for procurement of services upto INR 2.50 Lakhs, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed. Please refer to Annexure 10 & 11 for certificates to be recorded for such procurements.

9.10 Procedure for Procurements below INR 10 Lakhs

For procurements below INR 10 lakh, the user department/unit/division should prepare a list of likely and potential service providers based on formal or informal enquiries from the service providers involved in similar activities, scrutiny of 'Yellow Pages', and trade journals, if available, web site etc. The unit/division should scrutinise the preliminary list of likely contractors as identified above, shortlist the prima facie eligible and capable contractors and issue RfP to these shortlisted firms on a limited tender enquiry basis as per standard practice. The number of the contractors so identified for issuing RfP should be more than three. Services which are available on GeM have to be mandatorily procured through that portal

9.11 Procedure for higher Value of Procurements

For Procurements above the INR 10 lakh, the unit/division should issue advertised single stage tender enquiry asking for the offers by a specified date and time etc. Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in, on Government E-Market (GeM) and AYCL website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. Attention of known reputed service providers (as ascertained as per para above) may also be separately drawn wherever possible. Services which are available on GeM have to be mandatorily procured through that portal

9.12 Preparation of the Request for Proposals (RfP)

In procurement of other (non-consultancy) Services, a Standard RfP document should be basis for preparation of Bid Documents. There are variations in the way information and sections in standard RFPs are formulated but essential information/sections are as follows:

- i. A letter of invitation (LoI);
- ii. Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
- iii. Qualification/ Eligibility Criteria for service providers;
- iv. Activity Schedules and other Requirements
 - a. Description of Service
 - b. Activity Schedule
 - c. Manpower Schedule: Assessment of Manpower for Deployment
 - d. Materials Schedule (indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per manpower deployed).
 - e. Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.;
 - f. The statutory and contractual obligations to be complied with by the contractor.

- g. Services & Facilities to be provided by the unit/division and respective obligations of the unit/division and service provider
- v. General Conditions of Contract (GCC);
- vi. Special Conditions of Contract (SCC);
- vii. Formats
 - a. service provider's Bid Cover Letter
 - b. Qualification Information
 - c. Standard formats for the technical proposal;
 - d. Standard Format for the Financial Proposal
 - e. Letter of Acceptance
 - f. Contract Form
 - g. Securities Formats
 - 1. Bid Security (Bank Guarantee)
 - 2. Bank Guarantee for Advance Payment
 - 3. Performance Security (Bank Guarantee)

9.13 Important Provisions of ITB

- i. **Eligibility Criteria:** Eligibility for firms to be considered as responsive bid in procurement of Other (Non-consultancy) Services should be specified. For example:
 - a. The bidder must be registered under appropriate authorities i.e. must be registered with Service Tax authorities/Income Tax/EPF/ESI authorities/ PSARA/ PAN etc;
 - b. Joint Ventures (JV) are normally not permitted in the procurement of Other (Non-consulting) services;
 - c. Must not have been under any declaration of ineligibility by any authority. A declaration to the effect should be furnished;
 - d. A consistent history of litigation or arbitration awards against the Applicant may result in disqualification;
 - e. Each Bidder shall submit only one Bid for one RfP. The system shall consider only the last bid submitted through the e-procurement portal. In case of Packaging/Slicing of Services, it should be clarified, how multiple bids and discounts by a bidder in different slices would be considered.
- ii. **Qualifying criteria** to be met by bidders to qualify for award of the Contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below:
 - a. Financial Capability:
 - 1. Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% of the estimated cost.
 - 2. Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the BDS.
 - b. Past Experience:
 - 1. The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/ PSUs/ Nationalised Banks/Reputed Organisations. Services rendered with list of such Central/State/PSUs/ Nationalized Banks with duration of service shall be furnished.

2. The bidder must have successfully executed/completed similar Services (definition of “similar services” should be clearly defined), over the last three years i.e. the current financial year and the last three financial years: -
 - i. Three similar completed services costing not less than the amount equal to 40% of the estimated cost; or
 - ii. Two similar completed services costing not less than the amount equal to 50% of the estimated cost; or
 - iii. One similar completed service costing not less than the amount equal to 80% of the estimated cost.
 - c. Equipment and Managerial Capability:
 1. Ownership/proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
 2. a Contract Manager with five years’ experience in Services of an equivalent nature and volume, including no less than three years as Manager;
- iii. **Qualification Documents to be submitted:** To judge their qualification, all bidders should be asked to include the following information and documents with their bids:
- a. Copies of original Registration certificate documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder. Appropriate business licences/ registrations:
 1. Service Tax registration certificate
 2. PAN number
 3. Copies of EPF, ESI, Labour license
 4. Copy of valid license under the Private Security Agencies (Regulation) Act, 2005 or the similar Act/ Rules promulgated by State in which the service is performed (in case of Security Service)
 - b. Total monetary value of Services performed for each of the last five years;
 - c. Copies of work orders and experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
 - d. Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
 - e. Audited financial Statements for the last three years (Copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
 - f. Bank Account details;
 - g. Authority to seek references from the Bidder’s bankers;
 - h. Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
 - i. Proposals for subcontracting components of the Services amounting to more than 10 (ten) percent of the Contract Price.
- iv. **Site Visit:** The Bidder, at the Bidder’s own responsibility and risk, may be encouraged to visit at their own cost, and examine the site of required Services and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for the services.
- v. **Restrictions regarding Personnel Deployed:** The quoted rates shall not be less than the minimum wage fixed/notified by the State Government – where the service is performed and shall include all statutory obligations. However, bids without any element of cost over and above such minimum wage (or below it) shall be treated as ‘Nil’ price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the purchasing

unit/division shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, not drug addict and not indulge in any activity prejudicial to the interest of the unit/division. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

- vi. **Workmen Safety and Insurance:** The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the unit/division, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the unit/division's request, shall provide evidence showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out work. The unit/division shall not be liable for any compensation in case of any fatal injury/death caused to or by any manpower while performing/discharging their duties/ for inspection or otherwise.
- vii. **Liquidated Damages for Delay in Performance:** The service provider shall pay liquidated damages to the unit/division at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The unit/division may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.
- viii. **Penalty for non-performance:** If the service provider has not corrected a defect within the time specified in the unit/division's notice, a penalty for Lack of Performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the defect corrected, assessed as described in SCC.
- ix. **Filling up the Financial Bid by the Bidders:** The Bidder should be asked to fill in rates and prices for all items of the Services described in the Activity Schedule. Items for which no rate or price is entered by the Bidder will not be paid for by the unit/division when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. The priced Activity Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as in the month before the month of the deadline for submission of bids, should be included in the total Bid price submitted by the Bidder. To determine the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder. Bidding Documents should include a clause that "if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered".

9.14 Receipt of Bids, Evaluation and Award of Contract

- i. Receipt and opening of Bids is done in a manner similar to procurement of other categories. Annexure 8 may be used mutadis-mutandis for format of Bid Opening Attendance cum Report
- ii. The unit/division should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods Works. Unit/division will award the Contract to the Bidder whose Bid has been determined as the lowest evaluated Bid price, provided the offer is determined in accordance with the bid documents to be:
 - a. Substantially responsive;
 - b. Eligible bidder;
 - c. Meets the minimum technical/qualification standards

- iii. If, the contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating the contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the bidders for the award of more than one contract.
- iv. The unit/division reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the unit/division’s action.
- v. Notification of Award, Performance Security and Signing of the Contract also follows same procedure as in other categories of procurements.

A format of Tender Evaluation and Report is given in Annexure 12. (Rule 203 of GFR 2017).

9.15 Service Level Agreement (SLA)

A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:

- i. Identify and define the unit/division’s needs;
- ii. Eliminate unrealistic expectations on either side;
- iii. Provide a framework for understanding between the service provider and the unit/division;
- iv. Reduce areas of conflict and encourage dialog in the event of disputes

While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.

SLA has two sets of elements:

a. Service elements

- 1. the services to be provided (and perhaps certain services not to be provided, if unit/division might erroneously assume the availability of such services);
- 2. conditions of service availability;
- 3. service standards, such as the timeframes within which services will be provided
- 4. the responsibilities of both parties
- 5. escalation procedures in case of performance deficiencies

b. Management elements

- 1. how service effectiveness will be tracked
- 2. how information about service effectiveness will be reported and addressed
- 3. how service-related disagreements will be resolved
- 4. how the parties will review and revise the SLA-Conditions warranting change; Change frequency and Change procedures

9.16 Monitoring the Contract

Before the commencement of the services, the service provider shall submit to the unit/division for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. Concerned personnel/department throughout be involved in the conduct of the contract and to continuously monitor the performance of the contractor. The process is described in chapter-8, which is broadly applicable to both Consultancy and Non-consultancy services. (Rule 205 of GFR 2017).

Annexure 1: Integrity Pact

INTEGRITY PACT AGREEMENT

Andrew Yule & Company Limited (AYCL), having its Registered Office at "Yule House", 8 Dr. Rajendra Prasad Sarani, Kolkata 700001, hereinafter referred to as "**The Principal**".

And

..... having its Registered Office at.....here in after referred to as "**Bidder /Contractor /Supplier /Purchaser /Service Provider**".

Preamble

The Principal intends to award contract to Bidder/ Contractor/ Supplier/Purchaser/Service Provider under laid down organizational procedure, the contract for sale/ purchase of materials / goods as have been mentioned in the Purchase Order of the award and/or for obtaining service of whatever nature from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider etc. the principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and fairness/transparency in relation to the said award with the said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider.

In order to achieve these goals, the Principal will appoint Independent External Monitors (IEMs), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1 – Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for, or execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will during the tender process treat all **Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider** with equity and reason. The Principal will in particular, before and during the tender process, provide all necessary and appropriate technical, legal and administrative information related to the contract to all the said **Bidder/ Contractor/ Supplier/ Purchaser/ Service Providers** the same information and will not provide to **Bidder/ Contractor/ Supplier/ Purchaser/Service Provider any confidential / additional information through which the said Bidder/ Contractor/ Supplier/ Purchaser/Service Provider could obtain an unfair advantage in relation to the process or the contract execution.**
 - c. The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information relating to the conduct of any of its employees which is a criminal offence under the relevant anti-corruption laws in India or there be any substantive suspicion in this regard, the principal will inform its Chief Vigilance Officer/Vigilance Department and in addition can initiate disciplinary action.

Section 2: Commitments of the Bidder/ Contractor/ Supplier / Purchaser/ Service Provider.

1. The **Bidder/ Contractor/ Supplier/Purchaser/ Service Provider** commit to take all measures necessary to prevent corruption. It commits itself to observe the following principles during its participation in the tender process and during the contract execution.
 - a. **The said Bidder/ Contractor/ Supplier/Purchaser/ Service Provider will not directly or through any other person or firm, offer, promises or give to any of the principal's employee involved in the tender process or during the execution of the contract or to any third person any materials or other benefit which he/she is not legally entitled to in order to obtain any advantage in exchange of any kind whatsoever during the tender process or during the execution of the contract.**
 - b. **The Bidder Contractor/ Supplier/ Purchaser/ Service Provider will not collude and enter into any undisclosed agreement or understanding whether formal or informal with any other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider to impair transparency and fairness. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bid any other action to restrict competitiveness or to introduce cartelization in the bidding process.**
 - c. **The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider will not commit any offence under the said relevant IPC/PC Act; further it will not use improperly, for the purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.**
 - d. **The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider will, when presenting its bid, disclose any and all payments it has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.**
2. **The Bidder / Contractor / Supplier/ Purchaser / Service Provider will not instigate third party or persons to commit offences outlined above or be an attributory to such offences.**

Section 3: Disqualification from Tender process and exclusion from future contracts.

- a. **If the Bidder/ Contractor/ Supplier/Purchaser/Service Provider before awarding contract has committed a transgression through a violation of Section 2 or in any other form such as to put its/their reliability or credibility as Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider into question, the Principal is entitled to disqualify the Bidder/ Contractor/ Supplier/ Purchaser/Service Provider from the Tender process or to terminate the contract if already signed for such reason.**
- b. **If the Bidder / Contractor / Supplier / Purchaser / Service Provider has committed a transgression through a violation of Section 2 such as to put its/their reliability or credibility into question, the Principal is also entitled to exclude the said Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider from future contract awarding process. The imposition and duration of the exclusion will be determined by the severity of such transgression. The severity will be determined by the circumstances of the cause in particular, the number of transgressions, the position of transgression within the company's hierarchy and the amount of**

damage. The exclusion will be imposed for a minimum period of 6 months and maximum of three years.

- c. The Bidder/Contractor/Supplier/Purchaser/Service Provider accept and undertake to respect and uphold the principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.
- d. If the Bidder/Contractor/Supplier/Purchaser/Service Provider can prove that it/they have restored/recouped the damages caused by him/them and has installed a suitable corruption prevention system, the Principal may revoke the exclusion pre-maturely subject to discretion.

Section 4: Compensation for Damages

1. If the Principal has disqualified the Bidder/Contractor/ Supplier/Purchaser/Service Provider from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposited/Bid Security or 3% of the value of the offer whichever is higher.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Bidder/ Contractor/ Supplier/Purchaser/Service Provider liquidated damages equivalent to 5% of the Contract value or the amount equivalent Performance Bank Guarantee.
3. **The Bidder / Contractor / Supplier / Purchaser / Service Provider agrees and undertakes to pay the said amount without protest or demur subject only to condition that if the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider can prove and establish that the exclusion of them from the tender process or termination of the contract after the contract awarded to them has caused no damage or less damage than the amount of the liquidated damages, the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider shall compensate the principal only to the extent of the damages in the amount proved.**

Section 5: Previous Transgression

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider declares that no previous transgressions occurred the last three years with any other company in any country conforming to anti-corruption approach or with any other public sector enterprise in India that could justify its exclusion from the tender process.
2. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider make incorrect statement on this subject, it can be disqualified from the tender process or the contract, if already awarded can be terminated.

Section 6: Equal treatment of all Bidder/ Contractor/ Suppliers/ Purchasers/ Service Providers.

1. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider undertakes to demand from all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

2. The Principal will have the liberty to enter into agreements with identical conditions as this one with all other Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider.
3. The Principal will disqualify from the tender process any or all Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider who do not sign this Pact or violate its provisions.

Section 7: Criminal charges against violating Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider

If the Principal obtains knowledge of conduct of Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, or of an employee or a representative or an associate of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer/Vigilance Department of the Principal.

Section 8: Independent External Monitor/ Monitors

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally, independently and impartially. He would report to the Chairman, AYCL.
3. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider accepts that the Monitor has the right to access without restriction to all project documentation of the Principal including that provided by the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to the project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider, if any, with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relationship between the Principal and the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider. The parties can offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes that a violation of this agreement has committed, he will so inform the Management of the Principal and request the Management to discontinue or heal the violation or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The monitor will submit a written report to the Chairman, AYCL, within 6 weeks from the date of reference or intimation to him by the principal and, should the occasion arise, submit proposals for correcting such problematic situations.
7. If the Monitor has reported to the Chairman, AYCL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman AYCL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer/Vigilance Department, the

Monitor may also transmit this information directly to the Chief Vigilance Commissioner, Government of India.

Section 9 - Pact Duration

This pact begins when both parties have legally signed it. It expires 12 months after the last payment made under the contract, and for all other sub-contractors 6 months after the date of contract has been awarded.

Section 10 – Other Provisions

1. This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Kolkata.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Bidder/ Contractor/ Supplier/ Purchaser/ Service Provider is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case the parties will strive to come to an agreement to their original intentions.

(For & on behalf of the Principal)

(For & On behalf of Bidder/Contractor/ Supplier/Service Provider)

(Office Seal)

(Office Seal)

Place.....

Date.....

Witness 1:.....
(Name & Address).....

Witness 2:.....
(Name & Address).....

Annexure 2: Empanelment Format

NAME OF THE UNIT

Application for Empanelment Form

The applicants are required to furnish full information to the queries included in this form. In giving the particulars, the supporting documents/ certificates, as called for per queries at places, must be tagged with the application for evidencing the information furnished in the application for empanelment.

This application form should be submitted along with the registration fee of INR ... (Rupees) by crossed Postal Order/ Bank Draft in favour of Andrew Yule & Company Ltd.

- 1) Date of Advertisement for Registration :
 - 2) Name of the Firm in Full:
 - 3) Address of the Firm :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop/ Godown
 - e) Depot
 - 4) Telephone/Telegram/Fax No./E-mail :
 - a) Registered Office
 - b) Head Office
 - c) Branches
 - d) Workshop
 - e) Depot
 - 5) Status of the Organisation :
 - 6) Whether individual/firm/others (if others, please specify)
 - 7) Item for which empanelment is sought :
 - 8) Banker's Name :
 - a) Name of the Branch
 - b) Address of the Branch
 - c) Account Number
- Note : Confidential Report of financial position will be requested for by AY & Co. Ltd. from the Bankers.
- 9) Trade Licence No. : (Please attach a Xerox copy)
 - 10) ~~Factory Licence No. : (Not applicable here)~~
 - 11) Whether registered as an SSI Unit. : If yes, Registration No.
(Please attach a Xerox copy)
 - 12) Sales Tax Registration No. :
 - a) Central
 - b) State
(Please attach a Xerox copy of Registration Certificate)
 - 13) I.T. Permanent Account No.
 - 14) Photo copies of current I.T. & Tax : clearance Certificates are to be attached
 - 15) Whether the applicant is already empaneled: in this enterprise. If so, the details are to be furnished stating the types of jobs executed, etc. i.e.
 - (a) Description of the job (b) Year
 - (c) Amount & (d) Authorised by

16) Whether the applicant is empaneled with any : other Public Sector Undertaking/ other reputed manufacturers.

If so, the details are to be furnished

17) Financial Capacity (Year) :

a) Fixed Capital

b) Working Capital

(copies of Balance Sheet & Profit & Loss A/c for last 3 years should be attached)

18) Technical capacity :

(i) Tools & Equipment list (to be attached)

(ii) Manufacturing Capacity: (to be quantified)

19) Manpower on Rolls :

Total Manpower in Roll

a) Skilled workers

b) Unskilled workers

c) Others

d) Supervisors

e) Engineers

20) Name & Residential address of : Partners/ Directors/ Proprietors,
as the case may be

21) Whether any Govt. Servant(s) or : dismissed Employee(s) of Andrew Yule
& Co. Ltd./ any other Govt. Undertaking is in employment under the applicant

22) Whether the applicant or any of its Partners/ Directors has been banned or removed from the
approved list

of suppliers by the Enterprise or Undertaking / any other Enterprise or Undertaking in the past

I/ We hereby certify that the particulars furnished by me/ us above are true to the best of my/ our knowledge and belief and misrepresentations of facts will render me/ us liable to any action as may be deemed fit by Andrew Yule & Co. Ltd. Unit/ Division have the sole discretion to reject or accept my / our candidature for empanelment.

Place : (Signature of the Applicant) Office Stamp/Seal

Date :

Annexure 3: Model Clause/Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

Model Clauses for Tenders

- I. Any bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority.
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder from a country which shares a land border with India" for the purpose of this Order means:
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or e. An Indian (or other) agent of such an entity; or
 - e. A natural person who is a citizen of such a country; or
 - f. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The beneficial owner for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation –

 - a. "Controlling ownership interest" means ownership of or entitlement to more than 25% of shares or capital or profits of the company;
 - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than 15% of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Model Certificate for Tenders (for transitional cases as stated in para 3 of this Order)

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I hereby certify that this bidder is not from such a country and is eligible to be considered."

Model Certificate for Tenders

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for GeM:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country or, is not from such a country, has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure 4: Purchase Requisition (Indent) for Consultancy and other Services

Name of the Unit/division

Factory/Tea Garden

PURCHASE REQUISITION

FORM NO: -

Print Date:- XX/XX/XXXX

- Purchase Copy
- Planning Copy

S.O. NO	Date
Ref No	Section Planning

PR No.	Date
JOB NO.	BOM NO.

Remarks:

- Hold
- Passed

Sl.	Item Code	Cat	MIS/SMS Code	Description/Drawing No Remarks	<--Proc--> Qty UOM	<-Factory-> Qty UOM	Delivery Within <---Schedule--->	REN

REN: P = Procurement S = Sub-Contract
I = Existing Item Rate; R = Rate Contract; E = Enquiry; S = Own Make Item (Proc. Not Req.)

NOTE :-
 1 Test Certificates & inspection reports to be produced.
 2 Code No. / Fan Size must be marked by paints on finished materials.

 Indentor
 /

 Authorized Signatory /
 Unit Head

Annexure 5: Procurement Proposal for Procurement of Consultancy/other services

NO.		Date	
Category of Assignment		Consultancy Services/ other services	
Name of Officer/ Office proposing the Assignment			
Brief Description of Consultancy/ other services Proposed:			
Proposed Period of Engagement:			
Place and Nodal Officer for execution			
Total Estimated Cost:			
Estimate Name/ number:			
Allocation No		Allocation Code No	

Purpose/ Objective Statement of Services

- i. Description of service:
- ii. Background of the Organisation and the Project:
- iii. Purpose/ Objectives of the Assignment: (Highlight how the proposed procurement of services would fit in with short-term and strategic goals of unit/division)

Service Outcome Statement

- i. Outcomes expected from the Procurement of Services:
 - a. Broad List of Activities/ Steps involved in achieving objectives:
 - b. Expected Time-frame of assignment/ Duration of Engagement:
 - c. Rough estimate of cost of Procurement of services: (including related costs to be incurred by the organization)

Justification for the procurement of Services

- i. Capabilities required for carrying out the assignments:
 - a. Rough assessment of available in-house capabilities as compared to required capabilities:
 - b. The eligibility and pre-qualification criteria to be met by the consultants/
 - c. service providers:
 - d. Precedences and similar assignments carried out earlier in our organisation/
 - e. similar organisations
 - f. Justification: Based on assessment of required and in-house capabilities;

In case of Consultancy Services

It is certified that, the hiring of consultants is justified for following reasons (Tick points applicable). Please also add a narrative justification:

- i. Inadequacy of Capability or Capacity of required expertise in-house; or
- ii. There is internal capacity/ capability to do the job but there is consideration of economy, Speed and efficiency in relation to additional requirement/ commitment/ usage of;
 - a. Staff/ Management/ Organization;
 - b. Technological and Material Resources;
 - c. Money, and
 - d. Time/ Speed of execution; and

- iii. Also tick one or more of following:

- a. The need to have qualified consultant for providing a specialized high quality service; or/ and
- b. Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
- c. The need for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement
- d. Need to acquire information about/ Identifying and implementing new methods and systems
- e. Need for planning and implementing organizational change

In case of Other (Non-consultancy) Services

It is certified that, the procurement (outsourcing) of these services is justified for following reasons (Tick one main point below). Please also add a narrative justification:

- i. An administrative policy decided by the Company to outsource specific (class of) services; or
- ii. ii) Economy, Speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of (tick one or more below):
 - a. Staff/ Management/ Organization;
 - b. Technological and Material Resources;
 - c. Money, and
 - d. Time/ Speed of execution.

In principle approval

In principle approval may kindly be accorded, for further processing. Final administrative and budgetary approvals would be taken after development of Terms of Reference/ Activity Schedule and detailed estimates.

Proposing Officer

Signatures/Name/Designation/Department

TC Members/CEC Members:

Comments and Instruction:

Comments and Instructions: Approving Officer

Signatures/Name/Designation/Department

[Note: Points not related/relevant to the specific project may be deleted.]

Annexure 6: Terms of Reference (ToR) Format

1. Description of Assignment
2. Procuring Entity's Organisation Background
3. Assignment Background
4. Statement of Purpose/ Objectives
5. Statement of Assignments Outcomes
6. Detailed Scope of Work and Time-lines
 - a. Tasks, Activities, dependencies, bar chart and Gantt Chart, Milestones b. Place of Assignment and Touring Requirements if any
 - b. Length and Duration of assignments
7. Team Composition and Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the key experts under the Bid data sheet)
8. Capacity Building, Training and Transfer of Knowledge, if any
9. Deliverables, Reporting Requirements and Time Schedule for Deliverables [If no reports are to be submitted, state here "Not applicable."]
 - a. Format, frequency, and contents of reports; dates of submission
 - b. Number of copies, and requirements for electronic submission (or on computer media)
 - c. Persons (indicate names, titles, submission address) to receive them;
10. Background material, Data, reports, records of previous surveys, and so on, to be provided to the consultant (Mention a caveat about reliability of material provided and need for the consultant to verify and crosscheck vital aspects)
11. Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by the unit/division (Specifically mention, what facility/ utilities would not be provided and also, charges if any for facilities offered)
12. Institutional and organisational arrangement
 - a. Counterpart Project Manager and Team
 - b. Consultancy Management Committee
 - c. Chain of Command for reporting
13. Procedure for review of the work of consultant after award of contract.

[Note: Points not related/relevant to the specific project may be deleted.]

Annexure 7: Bid Opening Attendance Sheet cum Report (Outside GeM)

Name of the Unit/Division
Bid Opening Attendance Sheet cum Report

Attendance Record						
Sr No	Bidder's Name	Bidder's Address	Bidders's Authorization & Date	Represented by	Contact No	Signature of Representative

Bid Opening Report						
Tender No			Title			Date of Opening
Offer No	Bidder's Name	Bidder's Ref & Date	Submission of Requisite EMD (Y/N)	Submission of Mandatory Documents (Y/N)	Rate Quoted & Taxes/ Duites	Signature of Representative

Received total regular tenders..... (In figures/words) as above

Signature, Date and Time	Signature, Date and Time
Name and Designation of Tender Opening Officer	Name and Designation of Tender Opening Officer

Annexure 8: CEC/Tender Committee Minutes Format

(For Techno-Commercial/Financial Bids)

Unit/Division: _____ Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Section I: Top Sheet					
File No:				Date:	
Department				Method of Selection LCS/QCBS/SSS	
Type of Contract		Lump-sum/ Time Based/ Percentage/ Retainer cum Success Fee/ Indefinite Delivery			
Description				Estimated Cost:-	
Tender Published In				Date of Publication	
Bid Validity				Bid Opening Date	
Past Precedents/ Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (INR)	Remarks
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Background of the Assignment					
Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist, EoI and. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it available for review/approving authority), extension of proposal submission date, and so on).					

Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage – EoI/ Technical Evaluation: <ul style="list-style-type: none"> i. Participated/ Expressed Interest: ii. Shortlisted in EoI/ Technical Evaluation prior to this
Section III: Preliminary Evaluation of Responsiveness
Review handling of any complaints received
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications
Section IV: Evaluation of Responsive Bids: Technical Evaluation
<ul style="list-style-type: none"> i. Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of sub-criteria and associated weightings as indicated in the standard RfP and compliance of evaluation with RfP. ii. Summary of Evaluation Criteria and Weights assigned iii. Grading and Rating Scheme in the Bid documents or decided before the Evaluation iv. Present results of the technical evaluation: scores and the award recommendation (based on Rating System agreed among evaluators prior to receipt of proposals). v. Highlight strengths and weaknesses of each proposal (most important part of the report). <ul style="list-style-type: none"> a. Strengths: Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments. b. Weaknesses: Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest). vi. Comment on individual evaluators' scores (discrepancies). Items requiring further negotiations. <ul style="list-style-type: none"> a. Technical Evaluation Summary (simplified in case of LCS or EoI, otherwise detailed, if so chosen in RfP) b. Evaluation of Consultancy Firm's Experience (In case of Detailed Technical Evaluation specified) c. Evaluation of Methodology & Work Schedule (In case of Detailed Technical Evaluation specified) d. Evaluation of the Key Professionals (In case of Detailed Technical Evaluation specified)
Section V: Evaluation of Technically Successful Bids: Financial Evaluation
<ul style="list-style-type: none"> i. Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA ii. Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, justification of associated weightings as indicated in the standard RfP and compliance of evaluation with RfP. iii. Insert a summary table of evaluated financial scores/ combined weighted scores

- iv. Deliberations should be in the sequence of financial/ combined scores etc. Indicate: any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes; adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-based Qualifications (Qualifications),
- v. Attach Minutes of Public Opening of Financial Proposals

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- a. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
- b. Also mention that the rates recommended are considered reasonable (and basis for such determination).
- c. Total value of the recommendations for determining level of acceptance authority.
- d. Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- e. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per DOP.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority:

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____

Annexure 8A: Format for evaluation of Responsiveness

Name of the consultancy firm:

Sl. No.	Item	Required response
1	Has the consultant paid the RfP document fees?	Yes
2	Has the consultant submitted the requisite bid processing fee and bid security?	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed?	Yes
4	Has the power of attorney been submitted in the name of authorized representative?	Yes
5	In the case of JV/consortium, whether the MoU has been submitted?	Yes
6	Has the consultant submitted all the required forms of the technical proposal?	Yes
7	Technical proposal does not contain any financial information?	Yes
8	Is financial proposal submitted separately in a sealed cover?	Yes

Annexure 8B: Format for Simplified evaluation of quality (LCS/ EoI)

(If so specified in Bid Documents)

Sl. No.	Item	Required response
1	Does the consultancy firm have the required experience?	Yes
2	Does the proposed methodology of work fulfil the objectives of the assignment/ job till the last detail of the ToR?	Yes
3	Do the methodology, work plan and staffing schedule provide coverage of the entire scope of work as described in ToR?	Yes
4	Does the team leader fulfil the minimum educational qualification and experience criteria?	Yes
5	Has the consultant provided for all the professionals for requisite expertise?	Yes
6	Does the key professional (indicate the position) fulfil the minimum educational qualification and experience criteria? [Evaluate for all the proposed key personnel]	Yes
7	Does the staffing schedule including the key professionals proposed, the responsibility assigned to them and the support staff together is adequate for performing the entire scope of work indicated in the ToR?	Yes

Note: If the answer is yes, in all the cases, the consultancy firm is considered technically qualified for the assignment.

Annexure 8C: Format for Detailed Technical evaluation - Summary Sheet

(If so specified in RfP)

Sl. No.	Name of the consultant	Firm's Experience Marks	Methodology & Work schedule Marks Awarded	Qualifications of Key Professionals	Total Marks. Awarded	Ranking of Technical Marks
		Max. Marks	Max. Marks =	Max. Marks =	Max. Marks 100	

Annexure 8D: Evaluation of Consultancy Firm's Experience

(Averaged from individual worksheets of CEC members)

Sl. No.	Name of the Consultancy	Firm Number of Projects of similar nature	Marks Awarded
			Max. Marks =

Annexure 8E: Evaluation of Methodology & Work Schedule

(Averaged from individual worksheets of TC/CEC members)

Sl. No.	Name of the Consultancy	Firm's Understanding of ToR – Marks Awarded	Work Plan & Methodology – Marks Awarded	Organization and Staffing for the proposed assignment – Marks Awarded	Total – Marks Awarded
		Max. Marks =	Max. Marks =	Max. Marks =	Max Marks =

Annexure 8F: Evaluation of the Key Professionals

(Averaged from individual worksheets of CEC members)

Name of the Consultancy Firm:									
Sl No	Name of the Key Professionals	Educational Qualification	Marks Awarded	No of Projects of similar nature	Marks Awarded	Experience of the region (No of Projects in the region)	Marks Awarded	Total Marks (4+6+8)	
			Max Marks =		Max Marks =		Max Marks =		
1	2	3	4	5	6	7	8	9	
Grand Total for the consultant:									
Name of the Consultancy Firm:									
Grand Total for the consultant:									
Name of the Consultancy Firm:									
Grand Total for the consultant:									
Name of the Consultancy Firm:									
Grand Total for the consultant:									

Annexure 9: Activity and Other Schedule for Other (Non-consultancy) Services

- i. Description of Assignment
- ii. Unit/division's Organisation and Assignment Background
- iii. Statement of Purpose/ Objectives
- iv. Statement of Assignments Outcomes
- v. Itemized Activity Schedule and Time-lines
 - a. Tasks, Activities, dependencies, categorised into classes, location and features affecting prices.
 - b. Frequency of Activities, Quantum, Length and Duration of Activities
 - c. Performance standards for such activities
- vi. Labour/ Personnel Deployment Schedule:
 - a. Type of Personnel, Number of each type, Place, Shifts, Frequency of deployment
 - b. Project Managers, Supervisors, Their qualifications/ experience, numbers
 - c. Leave reserve and reliving staff needed are not included in the numbers of personnel, these must be included in the rate of each personnel
- vii. Material Schedule, if any: Materials, Consumables, Tools of Trade, to be consumed/ deployed, tabulate, quantum, specifications, per unit of activity/ Manpower/ day/ location etc
- viii. Essential Equipment Schedule: Deployment of essential machinery (equipment, Trucks, Cranes, Washing Machines, vessels/ crafts, plant & machinery) – mention quantity/ activity, specifications, capacity, age. Possession/ access to such machinery may also be included in the qualification requirements.
- ix. Outcomes, deliverables, reports and Time Schedule for Deliverables
- x. Statutory and contractual obligations to be complied with by the contractor: Various statutory provisions relating to labour, taxation, Workmen Safety, Child and Women Labour, Private Security Agencies, Environmental Protection, Mining, Forest clearance, Employment reservations and unit/division's own regulation about safety, security, confidentiality etc. must be listed, so that price implications and compliance is taken care of by the bidder.
- xi. Facilities and Utilities to be provided by the unit/division to service provider at Site: It should be mentioned, if any facility/ utility (Operation Manuals, Emergency Medical, Room, Furniture, Electricity connection, Water connection) etc would be made available to the successful bidder to carry out the service. In case it is proposed to charge the Electricity/ Water supplied to the service provider, the same may be mentioned, including the rate of charges. Specially mention facilities and utilities which will not be provided, or the facilities which would be provided on chargeable basis.
- xii. Institutional and organisational arrangement
 - a. Counterpart Project Manager and Team
 - b. Chain of Command for reporting
- xiii. Procedure for review of the work of consultant after award of contract.

Annexure 10: Certificate for Procurement of other services without Quotation

Name of Unit/division: _____

Ref No: _____

Place: _____ Date: _____

I, _____, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/ contractor at a reasonable price.

Description of Service:	
Justification:	
Place and Nodal Officer for availing the Services	
Contract Basis	Lump-Sum/ Unit (Item) Rate/ Time-based
Scope/ Quantum/ Performance Standards	
Rate:	
Taxes/Duties:	
Other Charges:	
Total Contract Price:	
service provider	
Vide Bill No.:	
Cheque may be drawn in favour of	
Name of Procuring	
Designation:	
Signature:	

Annexure 11: Purchase Committee Certificate Format

Name of Unit/division: _____

Ref No: _____

Place: _____ Date: _____

“Certified that we the undersigned, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier/contractor recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/Department concerned.” The details of recommended purchase are

Description of Service:						
Justification:						
Place and Nodal Officer for availing the Services						
Contract Basis					Lump-Sum/ Unit (Item) Rate/ Time-based	
Scope/ Quantum/ Performance Standards						
Details of Prices Ascertained						
service provider	Rate:	Taxes/Duties:	Other Charges:	Total Unit Price:	Total Price:	Recommendations & Comments
Selected service provider						
Unit Rate, Taxes/ Duties/ Other Charges						
Total Unit Rate						
Total Value of Purchase						
Cheque may be drawn in favour of						
Signature:			Signature:		Signature:	
Name 1:			Name 2:		Name 3:	
Designation:			Designation:		Designation:	

Annexure 12: Tender Committee Minutes Format for Other (Non- consultancy) Services
(For Techno-Commercial/Financial Bids)

Unit/Division: _____					
Minutes of Tender Committee Meeting (Techno-commercial/Financial Bids)					
Stage of Evaluation: Technical/ Financial					
Section I: Top Sheet					
File No:		Date:			
Description		Estimated Cost:-			
Type of Contract	Lump-sum/ Time Based/ Indefinite Delivery/ Unit (Item) Rate				
Tender Published In		Date of Publication			
Bid Validity		Bid Opening Date			
Past Precedents/ Procurements					
Sr. No.	Supplier	Order Reference & Date	Quantity	Basic Rate (INR)	Remarks
Sr. No.	Name	Designation	Sr. No.	Name	Designation
1			2		
3			4		
Section II: Background of the Assignment					
Include a brief description, context, scope, and objectives of the services. Mention technical and financial approvals; estimated cost; budgetary provisions; urgency of requirement; special technical requirements and other connected procurements which are part of same package/project.					
Review special conditions, restriction if any, on participation of bidders; purchase preferences, requirements prescribed in bid documents (EMD, document submission, etc.)					
Describe briefly the selection process that has been completed before this stage: mode of bidding; bidding document contents; bid publication; Pre-proposal Conferences, Amendment/ Clarifications sought and given, withdrawals of firms before proposal submissions, level of competition obtained; issues if any noticed during bid-opening (bids not opened due to lack/ unsatisfactory EMD, etc.), the establishment of the shortlist. Describe major events that may have affected the timing (delays, complaints from consultants, reference of RfP document (attach with the Evaluation Report or make it available for review/approving authority), extension of proposal submission date, and so on).					
Names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) of Firms who participated and Shortlisted Bidders prior to this stage: a. Participated: b. Shortlisted in Technical Evaluation prior to this					
Section III: Preliminary Evaluation of Responsiveness					
Review handling of any complaints received					
Discuss preliminary evaluation for determining substantially responsive bids and for minor corrections and clarifications					

Section IV: Evaluation of Responsive Bids - Technical/ Quality Evaluation

- i. Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of evaluation criteria in the standard RfP and compliance of evaluation with RfP.
- ii. Present results of the technical evaluation
- iii. Highlight strengths and weaknesses of each proposal:
 - a. Strengths: Experience in very similar projects in the country; proving a clear understanding of the scope of the assignment;
 - b. Weaknesses: Of a particular component of the proposal; of a lack of experience in the region or type of service; of a lack of responsiveness;

Section V: Evaluation of Technically Successful Bids: Financial Evaluation

- a. Start with review of techno-commercial evaluation and shortlisted Firms and approval and directions by CA
- b. Describe briefly the meetings and actions taken by the evaluation committee: formation of a financial evaluation team, outside assistance, evaluation guidelines, and compliance of evaluation with RfP.
- c. Insert a summary table of evaluated bid prices from L-1 to highest
- d. Attach Minutes of Public Opening of Financial Proposals

Section V: Summary of Recommendations

Bid-wise recommendation should be recorded

In case of evaluation of financial bids,

- a. Give a summary of recommended bids, award value, bid expiry date and special conditions, if any.
- b. Also mention that the rates recommended are considered reasonable (and basis for such determination).
- c. Total value of the recommendations for determining level of acceptance authority.
- d. Mention that none of the TC members have any conflict of interest with the parties recommended for award.
- e. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per DOP.

Signature Name and Designation of the Members

1		2	
	Date:		Date:
	(Name & Designation)		(Name & Designation)
3		4	
	Date:		Date:
	(Name & Designation)		(Name & Designation)

Remarks by the Accepting Authority:

Signature: _____ Date: _____

Name & Designation of Accepting Authority _____