

**PUBLIC PROCUREMENT
PROCEDURES AND POLICIES**

By

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Public Procurement –Policies and Procedures

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1. Government organizations purchase/procure

- i. Goods & Services and
- ii. Under take execution of works

In pursuance of

- i. their duties and responsibilities(functions).
- ii. to run an office like an office.

2.Important Terminologies used frequently in purchase

- 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 a Procuring Entity;
- 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 Procuring Entity, 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 standardized template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) **“Bidder registration document”** means a document issued by a Procuring Entity, including any amendment thereto, that sets out the terms and conditions of registration proceedings and includes the invitation to register;
- 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) **“Central Public sector enterprise”** means a body incorporated under the Companies Act or established under any other Act and in which the Central Government or a Central enterprise owns more than 50 per cent of the issued share capital;
- vii) **“Central Purchase Organization”** means a Procuring Entity which is authorised by the Government of India by an order, made in this behalf, to make procurement for one or more procuring entities or to enter into rate contracts or framework agreements for procurement by other procuring entities. At present, the Director General of Supply and Disposals (DGS&D) is such an authority. However Government can authorize other Organizations for specific categories of materials;
- viii) **“Competent authority”** means the officer(s) who finally approves the decision.
- ix) **“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 standardized 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;

x) **“e-Procurement”** means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, nondiscriminatory and efficient procurement through transparent procedures;

xi) **“Goods”**(BFR rule no. 125) 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, sub-assemblies, 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;

xii) **“Indenter”** (or the term ‘User (Department)’ in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the Procuring Entity to procure goods, works or services specified therein;

xiii) **“Inventory”** means any material, component or product that is held for use at a later time;

xiv) **“Invitation to (pre-)qualify”** means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;

xv) **“Invitation to register”** means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;

xvi) **“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, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;

xvii) **“Notice inviting tenders”** (including the term ‘Invitation to bid’ or ‘request for proposals’ in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.;

xviii) **“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;

xix) **“Pre-qualification document”** means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the prequalification bidding and includes the invitation to pre-qualify;

xx) **“Procurement” or “public procurement”** (or ‘Purchase’, or ‘Government Procurement/ Purchase’ in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term “procure” or “procured” shall be construed accordingly;

xxi) **“Procurement contract”** (including the terms ‘Purchase Order’ or ‘Supply Order’ 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 Procuring Entity and the supplier, service provider or contractor on mutually acceptable

terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term “contract” will also include “rate contract” and “framework contract”;

xxii) **“(Public) Procurement Guidelines”** means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals of Policies and Procedures for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) Procuring Entity’s Documents relevant to the context (Codes, Manuals and Standard/ Model Bidding Documents);

xxiii) **“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;

xxiv) **“Procuring authority”** means the officer who finally approves as well as those officials and committee members who submit the notes/reports for the approval for any decision. The authority who have the power to sanction contingent expenditure is the procuring authority(BFR rule no. 127).

xxv) **“Procuring Entity”** means any Ministry or Department of the Central Government or a unit thereof or its attached or subordinate office to which powers of procurement have been delegated. The departments who incur contingent expenditure have full power to sanction purchase of goods required for public use in accordance with Appdx- 5 of BFR.

xxvi) **“Prospective bidder”** means anyone likely or desirous to be a bidder;

xxvii) **“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 Procurement Glossary Manual for Procurement of Goods 2017 Ministry of Finance Department of Expenditure xx other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;

xxviii) **“Rate contract”** (or the term ‘framework agreement’ in certain contexts) means an agreement between a Central Purchase Organisation or Procuring Entity 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;

xxix) **“Registering authority”** means an authority which registers bidders for different categories of procurement.

xxx) **“Registered Supplier”** means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;

xxxi) **“Reverse auction”** (or the term ‘Electronic reverse auction’ in certain contexts) means an online real-time purchasing technique utilised by the Procuring Entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;

xxxii) **“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 a

Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;

xxxiii) **“Subject matter of procurement”** means any item of procurement whether in the form of goods, services or works or a combination thereof;

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

3. Legal Framework of Procurement

Followings are major legislations governing contracts of sale/purchase

1. Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so.
2. Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession)
3. Indian Contract Act, 1872 and the
4. Sale of Goods Act, 1930
5. Arbitration and Conciliation Act, 1996;
6. Competition Act, 2002;
7. Information Technology Act, 2000 etc),
8. General Financial Rules (GFR), 2017, Delegation of Financial Powers Rules (DFPR);
9. Product reservations or purchase preference to sellers in Micro and Small Enterprises, Domestically Manufactured Electronic Products, Pharmaceutical Central Public Sector Enterprises, Khadi/Handlooms goods, etc.
10. Guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

4. Value for Money

Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) it includes the initial acquisition cost, cost of operation, maintenance and disposal during the lifetime of the external resource procured.

Concept of quality is linked to the need and is refined into the concept of utility & value.

Value for Money (VfM) Both of above constitute Value for Money. VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are nontoxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/Terms of Reference (ToR); appropriate packaging/slicing of requirement; selection of an appropriate mode of procurement and bidding system.

5. Basic Aims of Procurement

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

- i) Right Quality Procurement aims to buy just the right quality that will suit the needs.
- ii) Right Quantity There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities for prolonged use. Hence, the right quantity should be procured which balances extra costs associated with larger and smaller quantities.
- iii) Right Price It is not correct to aim at the cheapest materials/facilities/services available.
- iv) Right Time and Place
- v) Right Source

6.Fundamental Principles of Public Procurement

General Financial Rules, 2017 (Rule 144) & Bihar Financial Rule, 2005 Rule 126 lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

i). Transparency Principle-(BFR Rule no. 131R) As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure for **transparency, fairness, equality, competition and appeal rights** and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

ii) Professionalism Principle (BFR Rule 131S)- The procuring authorities have a responsibility and accountability to ensure **professionalism, economy, efficiency, effectiveness and integrity**.

Yardsticks for public Procurement-The procedure to be followed in making public procurement must conform to the following yardsticks:-

- a) The description of the subject matter of procurement to the extent practicable should -- 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics; 2. not indicate a requirement for a particular trade mark, trade name or brand.
- b) the specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure;
- c) Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards.
- d) Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;
- e) offers should be invited following a fair, transparent and reasonable procedure;

f) the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;

g) the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;

h) at each stage of procurement the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision;

i) a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued;

j) All Ministries/Departments shall prepare Annual Procurement Plan before the commencement of the year and the same should also be placed on the their website.

iii). **Broader Obligations Principle-** Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government - to the extent these are specifically included in the 'Procurement Guidelines':

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 Government Organisations, to the extent specifically included in the 'Procurement Guidelines';

c) Support to broader social policy and programme objectives of the Government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines');

d) Facilitating administrative goals of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People With Disabilities etc. to the extent specifically included in the 'Procurement Guidelines'); e) Procurement policies and procedures must comply with accessibility criteria which may be mandated by the Government from time to time.

iv). **Extended Legal Responsibilities Principle-** Procuring authorities must also fulfill additional legal obligations in public procurement, over and above mere conformity to the mercantile laws like RTI act, Prevention of corruption Act and Judicial pronouncements.

v). **Public Accountability Principle-** Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. The Procuring Entity shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

a) documents pertaining to determination of need for procurement;

b) description of the subject matter of the procurement;

c) statement of the justification for choice of a procurement method other than open competitive bidding;

d) documents relating to pre-qualification and registration of bidders, if applicable;

- e) particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f) requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;
- g) bids evaluated, and documents relating to their evaluation;
- h) contracts and Contract Amendments; and
- i) complaint handling, correspondences with clients, consultants, banks.

7. Standards (Canons) of Financial Propriety (BFR rule-9 & General Fin Rule 21)

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety. Among the principles on which emphasis is generally laid are the following:-

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

8. Product Reservation and Preferential/Mandatory Purchase from certain sources-

- i). BFR rule no. 131B provides price preference @2% in large and medium industries & PSU located & registered in Bihar. Price preference of 7% has to be given to SSI working in Bihar. No bid security is charged from the such SSI. Product Reservation/Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

10. Public Procurement Cycle

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

- i) Need Assessment: Need assessment, formulation of Specifications and Procurement Planning;
- ii) Bid Invitation: Preparing bid documents, publication, receipt and opening of bids;
- iii) Bid Evaluation: Evaluation of bids and award of contract; and
- iv) Contract Execution: Contract management and closure;
- v) Disposal of Scrap: Disposal of Scrap through various modes of disposal.

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

11. Need Assessment

i). The indent for procurement determine the need.

> Maintain all documents relating to the determination technical/financial/budgetary approvals of the need for procurement.

> need keeping in view the Value for Money (VfM)

> no reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) except in case of proprietary purchase from a selected single source,

> if unavoidable, such item descriptions must be followed by the words “or substantially equivalent”.

> Method of satisfying it (owning/leasing/hiring/outsourcing or through Public Private Partnership (PPP), and so on) may be determined as per policies declared in this regard or based on a techno-economic evaluation (using life cycle cost, if feasible) of various alternative methods of satisfaction of the need and compatibility and interoperability with existing infrastructure or systems.

> The quantity of the subject matter of procurement, commensurate with economy:

> The authority preparing the indent 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. But in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a indenting or procuring authority may, for reasons to be recorded in writing, divide its procurement into appropriate packages, or club requirements of other users for procurement. Some requirements e.g. IT Systems may have elements of Goods, Works and Services. It could be either sliced into of Goods, Works and Services elements or combined into a package. Such decisions for slicing or packaging should be based on technical and VfM considerations. It is also necessary to round off the calculated quantity to the nearest wagon load/truck load/package to economise on transportation; and b) Units of quantity are a very important parameter.

> Time-schedule and place of product/work/service delivery:

ii). Estimation of Cost: 1. The estimated cost in the indent 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. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items for which there no historic data available. It may be noted that MRPs usually include significant margins for distributors, wholesalers and retailers;

In addition, wherever they are available Directorate General of Supplies and Disposals (DGS&D) rates should be considered. Likewise rates should be compared with recent orders/purchases of similar equipment by other states/ Departments.

2. Other methods for establishing the estimated cost in the indent and tender evaluation are: a) Estimated rate in past indents of the same goods; b) Last purchase price of this or similar or nearly equivalent requirements; c) Costing analysis based on costs of various components/raw materials of the item; d) Rough assessment from the price of the assembly/machine of which the item is a part or vice versa; e) Through the internal or external expert costing agencies; and f) As a last resort, rough assessment from the opportunity cost of not using this item at all;

iii).For price indices of a. indigenous items: <http://www.eaindustry.nic.in/home.asp.in> (Ministry of Industry); b. for metals and other minerals: <http://www.mmronline.com/or> <http://www.metalprices.com/index.asp> or <http://www.asianmetal.com/>; c) For price trends of nonferrous details; London Metal Exchange - <https://www.lme.com/gives> price trends of nonferrous details, which often show volatile trends; d) Other useful sites: <http://www.tradeintelligence.com/>and <http://www.cmie.com/>. (Centre for Monitoring Indian Economy); e) For price trends of different countries: <http://www.imf.org/external/pubs/ft/weo/2015/01/>(International Monetary Fund); and f) For organisation/chambers of commerce such as the (Indian Electrical and Electronics Manufacturer's Association): www.ieema.org;

12.Formulation of Technical specifications (TS)

The TS constitute the benchmarks against which the Procuring Entity 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 procuring authority should ensure that the specification should:

i) Provides a level playing field and ensures the widest competition; **ii)** Be unambiguous, precise, objective, functional, broad based/generic, standardized (for items procured repeatedly) and measurable. TS should be broad enough to avoid restrictions on workmanship, materials and equipment commonly used in manufacturing similar kinds of goods; **iii)** Set out the required technical, qualitative and performance characteristics to meet just the bare essential needs of the Procuring Entity without including superfluous and nonessential features, which may result in unwarranted expenditure; **iv)** Normally be based on standards set by the Bureau of Indian Standards (BIS), wherever such standards exist. Preference should be given to procure the goods which carry the BIS mark. In the absence of BIS standards, TS may be based on the relevant International standards. Provided that an indenting authority may, for reasons to be recorded in writing, base the TS on equivalent international standards even in cases where BIS standards exist. For any deviations from Indian standards or for any additional parameters for better performance, specific reasons for deviations/modifications should be duly recorded with the approval of the CA. **v)** All dimensions incorporated in the specifications shall be indicated in metric units. If due to some unavoidable reasons, dimensions in FPS units are to be mentioned, the corresponding equivalents in the metric system must also be indicated; **vi)** 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; **vii)** Make use of best practices. examples of specifications from successful similar procurements in the other organisations or sector may provide a sound basis for drafting the TS; **viii)** Commensurate with VfM, avoid procurement of obsolete goods and require that all goods and materials be new, unused and of the most recent or current models and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the bidding documents; **ix)** 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. **x)** Discourage procurement involving evaluation of samples: According to the existing guidelines on public procurement of goods, purchase in

accordance with a sample should not be usually undertaken. Calling for a sample along with the tender and deciding on the basis of evaluation of the sample may NOT be done.

13. 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: i) Scope of supply and, also, end use of the required goods; ii) 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. iii) Drawings; iv) Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options; v) Requirement of an advance sample, if any, at the post contract stage before bulk production; vi) Special requirements of preservation, packing and marking, if any; vii) Inspection procedure for goods ordered and criteria of conformity; viii) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any; ix) 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; x) Warranty requirements; xi) Qualification criteria of the bidders, if any; and xii) Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

14. Administrative & Technical Sanction, Budgetary Sanctions/Approvals.

i). Power of Sanction for New Scheme /sanction related to establishment & committed expenditure.

SN	New Scheme Value	Reviewing Authority	Sanctioning authority
1	Up to Rs. 5 crore	Administrative Department	Departmental Secretary
2	Rs. 5 cr to Rs. 15 cr.	Departmental Finance Committee	Departmental Minister
3	Rs. 15 cr to 30 cr	Departmental Finance Committee	Departmental & Finance Ministers
4	More than Rs. 30 cr.	Public Finance Committee	Cabinet
5	Creation of New SAB	Public Finance Committee	Cabinet

ii). Vehicle Purchase- will be sanction by “ Prashasi Padvarg Samittee”.

iii). Sanction- BFR rules 8- No authority can incur any expenditure/liability on public fund without sanction by the competent authority under general or special order of Government.

BFR rule-67-72 –Sanction must be issued in the name of AG. Content of sanction.

BFR rule 74- No retrospective Sanction.

BFR rule 75- The sanction which has not been executed for a year lapsed.

iv). Administrative sanction/approval: denotes the formal acceptance by the administrative department concerned of the proposals based on preliminary plans for incurring any expenditure of a purchase/work initiated by, or connected with, the functional requirements of such administrative department. It is, in fact, an order to execute certain specified purchase/works at a stated sum to meet the functional needs of the department requiring the work but is subject to budget provision.

v). Technical Sanction- means the sanction of the competent authority to a properly detailed estimate of the cost of a work. A technical sanction amounts to no more than a guarantee that the proposal is structurally and technically sound, the estimates are accurately calculated and based on adequate data.

15. Procurement Planning

After receipt of the Indent, the Procuring Entity should take following decisions to initiate procurement, i) Within 10 (Ten) working days of receipt of the indent from the user Department, the procuring authorities should critically review the description and TS enclosed with the indent for completeness/approvals/funding, VfM and possibility of the widest competition and seek clarifications from the indenting officer, if needed, before initiating such procurement; ii) Reassessment of the quantity and appropriate aggregation of quantities of various users; iii) Determine and declare in documents, any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The Procuring Entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders; iv) Selection of a system of bidding (single/two stage; single/two bids; suitability for e-Procurement or reverse auction); v) Select the mode of procurement (open tenders, limited tenders, single tenders, rate contracts, and so on); vi) Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/bidder registration or bidding documents.

16. Modes of Procurement

i). Direct Procurement without Quotation (BFR rule 131C)

Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase in the following situations: i) Procurements do not exceed the threshold (for each requirement) of Rs. 50,000 (Rupees Fifty thousand) for each case; ii) The requirement is urgent but was not covered in the procurement plan; and iii) 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. The competent officer of the Procuring Entity can initiate and complete this purchase after diligent enquiries from the market

ii). Direct Procurement by Purchase Committee (BFR rule-131D)

This mode of procurement is used for procurements valued above Rs. 50,000 (Rupees Fifty thousand) and up to Rs. 5,00,000 (Rupees Five lakh thousand) only on each occasion recommended by a local purchase committee of 3 members constituted by Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier & suitable product. Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed.

iii). Purchase of goods by obtaining Bids (BFR rule-131G)- In this following methods may be adopted. May be adopted for purchase of goods & services are of more than Rs.5 lakh.

a). Advertised Tender Enquiry/Open Tender Enquiry (OTE) BFR rule-131H- 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 in the following situations: i) Procurements exceeding the threshold of Rs. 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 Rs. 25 (Rupees twenty-five) lakh, OTE mode may be used, if warranted. (Rule 161 of GFR 2017)

b).Limited Tender Enquiry (LTE) BFR rule-1311- 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. 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 between Rs. 5 lakh to Rs. 25 lakh. The bidding documents should be simple normally consisting a single page with terms and conditions printed overleaf. 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. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site. ii) A simplified single Page 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 vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Supplier Registration section.

c).Single Tender Enquiry (STE) without Proprietary Article Certificate(PAC) (BFR rule 131L)

A tender invitation to one firm only without a PAC certificate is called a single tender. It should be resorted to only under following conditions: i) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained. ii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm. Terms and Conditions i) 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 DFPR/SoPP, prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and ii) Other terms and conditions of PAC procurement mentioned above would also apply in this case.

iv).Proprietary Article Certificate

In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/stockists) against a PAC certificate signed by the appropriate authority. Once a PAC is signed at the designated level, the powers of procurement are the same as in normal conditions as per the delegation of powers. This mode may

be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations. Terms and Conditions i) Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level for sourcing an item from OEM 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; 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;

v).Rate Contract (RC) (BFR rule 130)

A Rate Contract (commonly known as 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.

i) Benefit to Users: a) Competitive and economical price due to aggregation of demands. b) Saves time, efforts, man-hours and related costs involved in time consuming as well as repetitive tendering process. It thus reduces lead time for procurement. c) Availability of quality goods with full quality assurance back-up. d) Enables procurement as and when required and thus reduces inventory carrying cost. e) Advantageous even to small users and those located in remote areas. f) Provides one single point of contact to procure such items. ii) Benefit to Suppliers: a) Reduces marketing cost and efforts. b) Eliminates repetitive tendering and follow-up actions with multiple authorities. c) Provides single point contact for Govt. supplies. d) Aggregation of Govt. demand leads to economic production. e) Lends credibility. f) Promotes quality discipline.

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. Neither quantity is mentioned nor is any minimum commitment guaranteed in the RC. RC is most frequently used in procurement of goods, but can as well be used mutadis mutandis in works, services and consultancy – where it is commonly known as a Framework Contract (FC). In view of Government e-Marketplace, Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM and will now be applicable 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 various Central Government Ministries or Departments.

vi).Purchase of goods directly under Rate Contract (BFR rule-131E)

Director, General Supplies and Disposals (DGS&D) concludes rate contracts with the registered suppliers, for such goods. DGS&D furnishes and updates all the relevant details of the rate contracts on its website.

vii).Purchase from Designated State Purchase organization (BFR rule-129)- As BELTRON a nodal purchase agency for ICT & Hardware/ software.

17.Bidding Systems(BFR rule 131J)

Following types of bidding systems may be used.

i). **Single Stage Bidding System** -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;

a) **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, technical/commercial and financial details are submitted together in the same envelop may be followed. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful.

b) **Single Stage Two Envelops System (Two Bid System) (Rule 131J of BFR)**: In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelop system may to be followed. i)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 and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope; ii) If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids; iii) 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 with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided; iv) Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers are to be opened on a preannounced 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.

Pre-qualification Bidding (PQB) - 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. In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC – for example - 1. past experience of similar contracts, 2. performance capability and 3. financial strength) prior to the bid submission. Pre-qualification Bids (PQBs) should meet the norms of transparency, fairness and maintenance of competition.

ii) **Two Stage Bidding - Expression of Interest Tenders**

Market Exploration -There are instances where the equipment/plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various

technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation 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 manufacturers/suppliers in a transparent manner.

Expression of Interest (EoI) bids may be invited in following situations: i) It is not feasible for the Procuring Entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both; iii) The Procuring Entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or 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.

The procedure for two stage bidding shall include the following, namely: i) In the first stage of the bidding process, the Procuring Entity 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 the second stage of the bidding process, the Procuring Entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;

iii) 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. In the second stage, normal OTE bidding may be done. Such variant of EoI is called 'Non-committal' EoI.

iv). 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: This section should specify the format in which the bidders are expected to submit their EoI; v) 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 vi) Eligibility criteria: The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for shortlisting. Supporting documents required need to be clearly mentioned.

18. Government e-Marketplace (GeM) by DGS&D

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.

ii). DGS&D has developed an online Government e-Market Place for purchase of 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.

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, Aadhar authentication etc. The suppliers will offer their products on GeM and the Government buyer will be 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 & BFR rule 30 amended vide memo no. 9230 dated 27.11.2017. 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 DGS&D. The procuring authorities will certify the reasonability of rates.

v). Limitation of purchase on the GeM portal by the Government buyers as under:-

a) Up to Rs.25000/- through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period;

b) Above Rs.25000 up to 500,000/- through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period.

c) Above Rs.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; (For vehicle this limitation is 30 lakh).

vi) 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;

vii) The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department's own Last Purchase Price; etc.

viii).Payment Procedure in GeM: The payment procedure in GeM is governed by O.M. No. F.26/4/2016-PPD dated 26th May, 2016 issued by D/o. Expenditure, M/o. Finance, New Delhi. It is obligatory to make payments without any delay for purchases made on GeM. The consignee is required to issue an online digitally signed consignee receipt and acceptance certificate after receipt of goods within ten days. Thereafter, the payments are to be released maximum within ten days. The timelines after Consignee Receipt and Acceptance Certificate (CRAC) issued online and digitally signed by consignee will be two (2) working days for Buyer, one (1) working day for concerned DDO and two (2) working days for concerned Treasury for triggering payment through CFMS/Banks for crediting to the supplier's account.

19.Preparation of Bid Documents

BFR rule-30-The text of the bid document should be precise, definite, self-contained and comprehensive without any ambiguity. Bid documents should be based on Standard Bidding Documents (SBDs) relevant for the value range and the category of procurement. SBD for e-Procurement would be slightly different from the traditional SBD.

SBD must address the following aspects- i)Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery; ii) Limitation or preference for participation by bidders in terms of the Government policies; iii) The criteria for eligibility and qualification to be met by the bidder. The eligibility criteria should take care of the supplier's eligibility to receive such a Government contract. The qualification criteria should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on. iv) The procedure as well as date, time and place for obtaining, submitting and opening of the bids; v) Terms of delivery/completion; vi) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. vii) 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 bidder should be clearly indicated in the bidding documents. Viii) 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"; ix) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document. and x) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.

Contents of Tender Documents (BFR 2005 rule 131M & GFR 2017 Rule 168)deals with the content of SBD. The main sections of the SBD are:

- i) Notice Inviting Tender (NIT);
- ii) Instructions to Bidders (ITB);
- iii) Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- iv) Eligibility and qualification criteria;
- v) Schedule of requirements;
- vi) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);

- vii) General Conditions of Contract (GCC);
- viii) Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- ix) 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 and instructions clear.

20. Notice Inviting Tender

The model NIT format in SBD should be invited through email/SMSs/letters. In e-Procurement, the website may be programmed to generate these alerts automatically. 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. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate

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 and 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. Important clauses of ITB/AITB which may require attention and action are:

- i) Purchase Preference Policies
- ii) Clarification of Tender Documents
- iii) Amendment of Tender Documents by issuing a corrigendum.
- iv) Bid Validity A bid shall remain valid for the period mentioned in the ITB/AITB (normally 75(seventy five) days for OTE. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity preferably be made much before the expiry of the bid validity.
- v) Sealing and Marking of Tenders
- vi) 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.
- vii) Eligibility/Evaluation/Qualification Criteria.
- viii) OEM/Authorised Dealer/Agents of Supplier Except in case of Commercially-Off-the-Shelf (COTS) items, 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 as per formats given in SBD.
- ix) Conflict of Interest among Bidders/Agents
- x) Schedule of Requirements This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here.

xi) Quotation Received from Dealers/Agents for Items not Manufactured by Them When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty).

General and Special Conditions of the Contract- The GCC to be used for contracting for procurement are provided in Procuring Entity's SBD. GCC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award. 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 CA 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.

Receipt and Custody of Tenders

Cost and Availability of Tender Documents

Pre-bid Conference (Rule 173 (x) of GFR 2017) In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly equipment, large works and 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, 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.

Extension of Tender Opening Date

Sealing, and Marking of Bids by Bidders

Submission, Receipt and Custody of Tenders

Withdraw/Amendments/Modifications to Bids by Bidders

Procedures to be followed during Bid Opening

21. Bid Security (BFR 2005 rule 131O & Rule 170 of GFR 2017)- To safeguard against a bidder's withdrawing or altering its/his bid during the bid validity period in the case of OTE, Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids except from bidders like purchase nodal agency, National small industries corporation or govt dept., who are exempted from paying Bid Security. The amount of Bid Security should generally be between two to five per cent of the estimated value of the goods to be procured. The Bid Security may be obtained in the form of an account payee demand draft, fixed deposit receipt, or banker's cheque. The Bid Security is normally to remain valid for a period of 45 (Forty-Five) days beyond the final bid validity period.

22. Performance Security (BFR, 2005 rule 131P) & (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. Unlike contracts of Works and Plants, in case of contracts for Goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance Security should be for an amount of five to ten per cent of the value of the contract as specified in the bid documents. Performance Security may be furnished in the form of an account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India in an acceptable form, safeguarding the purchaser's interest in all respects. Unlike, Procurement of Works, in Procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Performance Security is to be furnished by a specified date (generally 14(fourteen) days after notification of the award) 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. The Performance Security will be forfeited and credited to the Procuring Entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Verification of Bank Guarantees.

Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

23.Payment Clause

i).The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country. While claiming the payment, the supplier should also certify in the bill that the payment being claimed is strictly in terms of the contract and all obligations on the part of the supplier for claiming this payment have been fulfilled as required under the contract. The bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up.

ii).Payment to Suppliers: In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the Procuring Entity must provide the statutory certificates for the taxes deducted to the Supplier. No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed. The invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance.

iii).Documents for Payment for Goods i) Supplier's Invoice indicating, inter alia description and specification of the goods, quantity, unit price, total value; ii) Packing list; iii) Insurance certificate; iv) Railway receipt/consignment note; v) Manufacturer's guarantee certificate and in-house inspection certificate; vi) Inspection certificate issued by purchaser's inspector; and vii) Any other document(s) as and if required in terms of the contract.

24.Advance Payment(BFR, 2005 rule 131Q)

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases: i) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment; etc. ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;

Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordinance factories: a) Thirty per cent of the contract value to private firms; b) Forty per cent of the contract value to a state or central Government agency or PSU; or c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract; d) In exceptional cases, the Administrative Department may relax the ceilings mentioned above with prior concurrence of the Associated/integrated Finance. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms and ammunitions from ordinance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case to case basis.

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

25.Price Variation Clause(BFR, 2005 Rule 30(viii))-

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, any other neutral and fair source of indices.

a)The following are important elements of PVC: i) 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; ii) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier); iii) 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; iv) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment; v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC; vi) 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; vii) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government; viii) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item; ix) The clause should also contain the mode and terms of payment of the price variation admissible; and x) The 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. 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." xi) 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.

b). Taxes, Duties and Levies

The duties and taxes including excise duty and VAT levied by the Government on domestic goods vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (Procuring Entity) as per the section 64A of the Sales of Goods Act, 1930. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations. In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations there on should be entertained after opening of tenders and during the currency of the resultant contract. If a tenderer chooses to quote price inclusive of excise duty/Sales Tax/VAT, it should be presumed that the duties/taxes so included is firm unless he has clearly indicated

the rate of duties/taxes included in his price and also sought adjustment on account of statutory variation thereon.

c).Octroi and Local Taxes- In case the goods supplied against contracts placed by Procuring Entity are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract.

26.e-Payment to Vendors/Contractors

Through CFMS/PFMS/DBT.

27.Deduction of Tax at Source-

Income Tax, Goods & Service Tax, Labour cess, Royalty, at Source from Payments to Suppliers/Contractors.

28.Recovery of Public Money from Supplier's Bill-

Sometimes, requests are received from a different Ministry/Department for withholding some payment of a supplier out of the payment due to it against a contract. Such requests are to be examined by the Ministry/Department (which has received the request) on the merits of the case for further action. It will, however, be the responsibility of the Ministry/Department asking for withholding of payment to defend the Government against any legal procedure arising out of such withholding as also for payment of any interest thereof.

29.Refund to Supplier

Security, excess tax, penalty, Royalty etc.

30.Payment against Time Barred Claims-

Ordinarily, all claims against the Government 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 Ministry/Department concerned in consultation with the paying authority. The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the CA.

31.Evaluation of Bids and Award of Contract

i).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.

ii).Preparation and Vetting of Comparative Statement

Preliminary Examination

Unresponsive Tenders

Non-conformities between Figures and Words

Discrepancies between Original and Additional/Scanned Copies of a Tender

Minor Infirmary/Irregularity/Non-conformity

Clarification of Bids/Shortfall Documents

iii).Evaluation of Responsive Bids and Decision on Award of Contract

> Evaluation of Techno-commercial Bid

>Evaluation of eligibility/qualification Criteria:

>Evaluation of Technical Suitability:

>Evaluation of Commercial Conditions:

>Considering Minor Deviations:

>Declaration of Successful Bidders:

> Right of Bidder to question rejection at Techno-Commercial Stage

> Evaluation of Financial Bids and Ranking of Tenders in general:

iv).Deliberations by the Tender Committee for Award of Contract

>Timely Processing of Tenders (Rule 174 (i) of GFR 2017)

> Extension of Tender Validity Period

> Variation of Quantities at the Time of Award

> Option clause

> Splitting of Contracts/Parallel Contracts

> Reasonableness of Prices

v).Points to 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; and 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”.

vi).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. Procuring Entity 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, Procuring Entity determines that the bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the bid/proposal.

vii).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” (AAEC) 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. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

viii).Negotiations (Rule 173 (xiv) of GFR 2017) i) 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.

ix).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; and 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. 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) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier and c) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter. 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.

x).Consideration of Lack of Competition in OTE and LTE (Rule 173 (xix) and (xxi) of GFR 2017) Sometimes, against advertised/limited tender cases, the Procuring Entity 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. 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 Ministries/Departments should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency: a) Inadequate Competition; b) Non-availability of suitable quotations from registered vendors; c) Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

xi).Cancellation of Procurement Process/Rejection of All Bids/Re-tender (Rule 173 (xix) of GFR 2017) i) The Procuring Entity 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 un-rectifiable 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. (Please refer

to para above also regarding receipt of a single offer); e) The Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget; f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the 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 Procuring Entity shall cancel the procurement process. Provided that the Procuring Entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder. ii) Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The decision of the Procuring Entity 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 Procuring Entity 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.

xii).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. 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.

xiii).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/notings 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.

xiv)Tender Committee Recommendations/Report

xv).Award of Contract –

>LoA to Successful Bidder

>Publication of Tender Results and Return of EMD of Unsuccessful Bidders (Rule 173 (xviii) of GFR 2017)

> Bidder's right to question rejection at this stage

> Performance Security

> Acknowledgement of Contract by Successful Bidder and Execution

> Framing of Contract

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

i) Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Associated/integrated Finance and approved by CA. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Associated/integrated Finance.

ii) All contracts shall contain a provision for a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor; b) A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/works/services;

iii) All contracts for supply of goods should reserve the right of the Government 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 contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Government at any time on the expiry of six months' notice to that effect.

vi) Standard forms of 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 Rupees 5 lakh by issuing purchase orders containing basic terms and conditions; b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (Rupees Twenty-Five) lakh and above, and of all rate and running contracts entered into by civil Departments of the Government should be sent to the Accountant General.

33.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.

34. Handling Procurement in urgencies/Emergencies and Disaster Management-

There are sufficient fast track procurement modalities to tackle procurements in urgent/emergent and Disaster Management situations. Enhanced delegations of procurement powers in SoPP may be considered to handle such situations. Use of following modes of procurements may be utilised in order of speed (under Disaster Management situations, threshold limits of modes of procurement may be increased for higher level of officers, with the sanction of Secretary of the Department): i) Direct Procurement Without Quotation ii) Direct Procurement by Purchase Committee iii) SLTE/Limited/Single Tender Enquiry, with reduced time for submission of Bids To speed up procurement, advance cash may be drawn for direct procurement modes and made available to the Committees/officer, with accounts and vouchers to be submitted after purchase.

35. Buy Back Offer (BFR, 2005 rule 131T)-

When it is decided to replace an existing old item(s) with a new/better version, the Department may trade the existing old item while purchasing the new one by issuing suitable 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)

36. 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 purchase organization specifies the performance and output required from the plant proposed to be set up and broadly outlines the various parameters it visualizes for the desired plant. The inputs and other facilities, which the purchase organization 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.

vii) Past experience, Capacity and Financial strength of a supplier is an important determinant of quality, after sales support of the Capital Goods; such procurements are a fit case for Pre-Qualification bidding.

37. Annual Maintenance Contract (AMC)(BFR, 2005 rule-131N)

- i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, the purchase organisation may enter into a maintenance contract. It must, however, be kept in mind that 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;
- ii) 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 in question. The purchase organisation should decide this aspect on case to case basis on merit;
- iii) 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;
- iv) 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;
- v) 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 terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis;
- vi) 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;
- vii) 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 Procuring Entity, 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;

viii) 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 him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill;

ix) 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 two and a half to five percent of the value of the equipment to be maintained;

x) Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rupees one Lakh, a suitable bank guarantee is to be obtained from the firm to safeguard the purchaser's interest;

xi) Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below: "The 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).

38.Contract Management(BFR 2005 rule 30A)

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 contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that "we get what we pay and contract for and pay for only for what we get".

a).Normally, the following issues are handled during this phase:

i) Amendments to the contract;

- ii) Operation of the option clause;
- iii) Safeguards for handing over Procuring Entity materials/equipment to contractors;
- iv) Payments to the contractor and handling of securities;
- v) Monitoring of supplier performance;
- vi) Delays in performance of the contract;
- vii) Breach of contract, remedies and termination of contract;
- viii) Dispute resolution;
- ix) Contract closure upon completion;
- x) Goods receiving;
- xi) Quality assurance;
- xii) Accountal and payment of bills; and
- xiii) Storage and issue of inspected goods.

b).Costs of delay in Contract Management Decisions: Delays 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.

c).Amendment to the Contract- Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/inescapable, any modification will be carried out with the prior approval of the CA with the Associated/integrated Finance's concurrence. Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

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. Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-Procurement portals/Websites that were used for publication of the original tender enquiry. 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.

d).Operation of Option Clause Option Clause Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%. Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced

value may be taken. Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees Fifty) 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/decrease the ordered quantity by up to 25 (Twenty Five) per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)."

39. PROCUREMENT OF SERVICES

Following BFR rules regulate the procurement of services

Rule 131U. The Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well defined in terms of content and time frame for its completion or outsource certain services.

Rule 131V. This chapter contains the fundamental principles applicable to all Departments regarding engagement of consultant(s) and outsourcing of services. Detailed instructions to this effect may be issued by the concerned Ministries or Departments. However, the Departments shall ensure that they do not contravene the basic rules contained in this chapter.

Rule 131W. Identification of Work / Services required to be performed by Consultants : Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

Rule 131X. Preparation of scope of the required work / service : The Departments should prepare in simple and concise language the requirement, objectives and the scope of the assignment. The eligibility and pre-qualification criteria to be met by the consultants should also be clearly identified at this stage.

Rule 131Y. Estimating reasonable expenditure : Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organisations engaged in similar activities.

Rule 131Z. Identification of likely sources :

(i) Where the estimated cost of the work or service is upto Rupees twenty-five lakhs, preparation of a long list of potential consultants may be done on the basis of formal or informal enquiries from other Departments or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc.

(ii) Where the estimated cost of the work or service is above Rupees twenty-five lakhs, in addition to (i) above, an enquiry for seeking 'Expression of Interest' from consultants should be published in at least one national daily and the Department's web site. The web site address should also be given in the advertisements. Enquiry for seeking Expression of Interest should include in brief, the broad scope of work or service, inputs to be provided by the Department, eligibility and the pre-qualification criteria to be met by the consultant(s) and consultant's past experience in similar work or service. The consultants may also be asked to send their comments on the objectives and scope of the work or service projected in the enquiry. Adequate time should be allowed for getting responses from interested consultants

Rule 131ZA. Short listing of consultants : On the basis of responses received from the interested parties as per **Rule 131Z above**, consultants meeting the requirements should be short listed for further consideration. The number of shortlisted consultants should not be less than three.

Rule 131ZB. Preparation of Terms of Reference (TOR) : The TOR should include

- (i) Precise statement of objectives;
- (ii) Outline of the tasks to be carried out;
- (iii) Schedule for completion of tasks;
- (iv) The support or inputs to be provided by the Department to facilitate the consultancy.
- (v) The final outputs that will be required of the Consultant;

Rule 131ZC. Preparation and Issue of Request for Proposal (RFP) : RFP is the document to be used by the Department for obtaining offers from the consultants for the required work / service. The RFP should be issued to the shortlisted consultants to seek their technical and financial proposals. The RFP should contain :

- (i) A letter of Invitation
- (ii) Information to Consultants regarding the procedure for submission of proposal .
- (iii) Terms of Reference (TOR).
- (iv) Eligibility and pre-qualification criteria in case the same has not been ascertained through Enquiry for Expression of Interest.
- (v) List of key position whose CV and experience would be evaluated.
- (vi) Bid evaluation criteria and selection procedure.
- (vii) Standard formats for technical and financial proposal.
- (viii) Proposed contract terms.
- (ix) Procedure proposed to be followed for midterm review of the progress of the work and review of the final draft report.

Rule 131ZD. Receipt and opening of proposals : Proposals should ordinarily be asked for from consultants in 'Two-bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelopes in a bigger envelop duly sealed and submit the same to the Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Department at the specified date, time and place.

Rule 131ZE. Late Bids : Late bids i.e. bids received after the specified date and time of receipt, should not be considered.

Rule 131ZF. Evaluation of Technical Bids : Technical bids should be analysed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

Rule 131ZG. Evaluation of Financial Bids of the technically qualified bidders : The Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee as per **Rule 131ZF** above for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

Rule 131ZH. Consultancy by nomination : 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 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.

Rule 131ZH. Monitoring the Contract : The Department should be involved throughout in the conduct of consultancy, preferably by taking a task force approach and continuously monitoring the performance of the consultant(s) so that the output of the consultancy is in line with the Department's objectives.

40. OUTSOURCING OF SERVICES

Rule 131ZI. Outsourcing of Services : A Department may outsource certain services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines.

Rule 131ZJ. Identification of likely contractors : The Department should prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc.

Rule 131ZK. Preparation of Tender enquiry : Department should prepare a tender enquiry containing, inter alia :

- (i) The details of the work or service to be performed by the contractor;
- (ii) The facilities and the inputs which will be provided to the contractor by the Department;
- (iii) Eligibility and qualification criteria to be met by the contractor for performing the required work / service; and
- (iv) The statutory and contractual obligations to be complied with by the contractor.

Rule 131ZL. Invitation of Bids :

(a) For estimated value of the work or service upto Rupees ten lakhs or less : The Department should scrutinise the preliminary list of likely contractors as identified as per **Rule 131ZJ** above, decide the prima facie eligible and capable contractors and issue limited tender enquiry to them asking for their offers by a specified date and time etc. as per standard practice. The number of the contractors so identified for issuing limited tender enquiry should not be less than six.

(b) For estimated value of the work or service above Rupees ten lakhs: The Department should issue advertised tender enquiry asking for the offers by a specified date and time etc. in at least one popular largely circulated national newspaper and web site of the Department.

Rule 131ZM. Late Bids : Late bids i.e. bids received after the specified date and time of receipt, should not be considered.

Rule 131ZN. Evaluation of Bids Received : The Department should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract.

Rule 131ZO. Outsourcing by Choice : Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the Competent Authority in the Department may do so in consultation with the Internal Financial Adviser. 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.

Rule 131ZP. Monitoring the Contract : The Department should be involved throughout in the conduct of the contract and continuously monitor the performance of the contractor.