

Manual for Procurement of Consultancy & Other Services

(Updated June, 2022)

Government of India
Ministry of Finance
Department of Expenditure

FOREWORD

(for updated version of Manual issued in 2022)

The Manual for Procurement of Consultancy & Other Services was comprehensively revised and issued in 2017. The manual, over a period of time, has become a standard reference document for officials involved in Public Procurement across all Ministries/ Departments/ Attached and Sub-ordinate bodies/ Central Public Sector Enterprises, etc. The Manual is also a resource material for institutes providing training on Public Procurement.

2. Public Procurement is a dynamic field where policies are constantly reviewed to help Government achieve its socio-economic or strategic goals. Hence, there is a need to keep reference documents, like manuals, updated to ensure their continued relevance.

3. Instructions on procurement issued by Department of Expenditure from time to time, since issuance of the last Manual, have been incorporated in the current edition. **Further, all procurement related instructions issued by Central Vigilance Commission have been subsumed into the Manual, in collaboration with the Commission.**

I would like to acknowledge the hard work of the concerned officers not only in this Department but in other Organisations, Ministries and Departments; the role of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also specifically acknowledged.

4. I hope that this updated Manual will help procuring officials working in various Ministries/ Departments and Public Enterprises as a guiding template, deepen the impact of policy initiatives and improve the ease of doing business with the Government.

(Dr. T. V. Somanathan)
Finance Secretary

FOREWORD

1. Government organizations procure a wide variety of goods and services and undertake execution of works in pursuance of their duties and responsibilities. With a view to improving transparency in decision making in public procurement and reducing the scope for subjectivity, Department of Expenditure in 2006 had prepared a set of three Manuals on Policies and Procedures for Procurement of Goods, Works and hiring of Consultants, in conformity with the General Financial Rules (GFR), 2005. Over the years, these Manuals have served as a guide book for procurement.
2. In the last few years, the Government of India has issued new instructions in the domain of public procurement. Some of these important changes include introduction of Central Public Procurement Portal (CPPP), Government e-Marketplace (GeM), preferential market access for micro and small enterprises, inclusion of integrity pact, etc. The GFR has been revised comprehensively in March 2017 covering inter-alia these set of new instructions. Consequently the Manual of Procurement too has been revised after a decade and within a month of the release of GFR 2017.
3. The new Manual on Procurement of Consultancy & other Services has been extensively revised in keeping with GFR 2017 and in consonance with the fundamental principles of transparency, fairness, competition, economy, efficiency and accountability. Efforts have been made to cover all major aspects of procurement in this Manual in a user-friendly manner. The manual is the outcome of extensive consultations in two stages with Ministries/Departments/PSUs and other organizations over a period of six months.
4. Manuals issued by this Department are to be taken as generic guidelines, which have to be necessarily broad in nature. Ministries/Departments are advised to supplement this manual to suit their local/specialized needs, by issuing their own detailed manuals (including customized formats); Standard Bidding Documents and Schedule of Procurement Powers to serve as detailed instructions for their own procuring officers.
5. I would like to acknowledge the lead taken by Dr. Vivek Joshi, Joint Secretary, DoE and dedicated efforts of Shri Sanjay Aggarwal, Director (PPD), Shri Vinayak T. Likhari, Under Secretary (PPD) and Shri Girish Bhatnagar, Consultant (Public Procurement) in revision of this Manual. I would also like to thank Ministries, Departments, other organisations and individuals who reviewed the drafts of the Manual and provided their valuable inputs.
6. I hope that this Manual would be useful to procuring officials working in various Ministries/Departments as operating instructions and will bring about greater transparency and predictability in Government procedures and help in improving the ease of doing Business with Government.


(Ashok Lavasa)
Finance Secretary

Date : 18.04.2017

Disclaimer

While every care has been taken to ensure that the contents of this Manual are accurate and up to date till June 2022, the procuring entities are advised to check the precise current provisions of extant law and other applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this Manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law and the original instructions shall prevail.

Manual for Procurement of Consultancy & Other Services

Table of Contents

FOREWORD	i
Disclaimer.....	iii
Abbreviations and Acronyms	xii
Procurement Glossary	xiv
Chapter 1: Introduction to Procurement of Consultancy/ Other Services	1
1.1 Procurement Rules and Regulations; and this Manual	1
1.2 Clarification, Amendments and Revision of this Manual	2
1.3 Applicability of this Manual.....	2
1.4 Authorities competent to procure Consultancy and other services and their Purchase Powers.....	6
1.5 Basic Aims of Procurement – Five R's of Procurement	6
1.6 Principles of Public Procurement	7
1.7 Standards (Canons) of Financial Propriety	7
1.8 Public Procurement Infrastructure at the Centre.....	8
1.9 Preferential/Mandatory Purchase from certain sources	9
1.10 When is Procurement of Services justified	24
1.11 Principles for Public Procurement of Services	25
1.12 The Law of Agency – applicable to Procurement of Consultancy and other Services	26
1.13 Proactive Information Disclosures	26
1.14 Public Procurement Cycle	27
1.15 Procurement Proposal (Concept Paper) for Consultancy and other services	28
Chapter 2: Consultants, service providers and Governance Issues	31

Table of Contents

2.1	Types of consultants/ service providers	31
2.2	Code of Integrity for Public Procurement (CIPP)	33
2.3	Integrity Pact (IP)	39
2.4	Debarment of Suppliers/ contractors/ consultants/ service providers	42
Chapter 3: Types of Contracts and Systems of Selection of consultants/ service providers 49		
3.1	Types of Contracts	49
3.2	Lump Sum (Firm Fixed Price) Contract.....	49
3.3	Time-Based (Retainer-ship) Contract	50
3.4	Percentage (Success/ contingency Fee) Contract.....	51
3.5	Retainer and Success (Contingency) Fee Contract.....	52
3.6	Indefinite Delivery Contract (Price Agreement).....	53
3.7	Systems of Selection of service providers	54
3.8	Price based System - Least Cost Selection (LCS)	56
3.9	Quality and Cost Based Selection (QCBS).....	58
3.10	Direct Selection: Single Source Selection (SSS).....	60
3.11	Fixed Budget – based Selection (FBS) for consultancy services :	62
Chapter 4: Preparing for Procurement of Consultancy Services		64
4.1	Preparation of Terms of Reference (ToR)	64
4.2	Estimating Costs, Setting the Budget, and Seeking Approval	68
4.3	Finalizing and Approval of the ToR.....	70
4.4	Developing a Procurement Plan	70
4.5	e-Procurement	70
Chapter 5: Shortlisting Stage in Procurement of Consultancy Services		72
5.1	Shortlisting of qualified consultants – Expression of Interest (Eol)	72
5.2	Short List of consultants.....	80

5.3	Shortlisting – Risks and Mitigation	83
Chapter 6: Selection of consultants by Competitive Process.....		84
6.1	The evaluation process	84
6.2	Preparation and Issuance of the Request for Proposals (RfP)	84
6.3	Pre-proposal Meeting	97
6.4	Receipt of Proposal.....	98
6.5	Consultancy Evaluation Committee (CEC)	98
6.6	First Stage of Evaluation: Consideration of Responsiveness	102
6.7	Evaluation of the Quality – Technical Proposals.....	103
6.8	Evaluation of Cost	106
6.9	Selection of the winning consultant.....	108
6.10	Negotiations and Award of Contract	111
6.11	Rejection of All Proposals, and Re-invitation	112
6.12	Confidentiality	112
6.13	RfP, Evaluation and Award Stage – Risks and Mitigation	112
Chapter 7: Special Types of Engagements.....		114
7.1	Single Source Selection (SSS)	114
7.2	Selection of Individual consultants/ service providers.....	115
7.3	Selection of Specialized Agencies/ Institutions	116
7.4	Selection of Nongovernmental Organizations (NGO)	117
7.5	Procurement Agents	117
7.6	Inspection Agents	118
7.7	Financial Advisors	118
7.8	Auditors	119
7.9	Public competition for Design of symbols/logos.....	119
Chapter 8: Monitoring Consultancy/ Other services Contract		122
8.1	Monitoring of the Contract.....	122

Table of Contents

8.2	Contract Monitoring Committee – (CMC).....	122
8.3	Issuing Notice to Proceed - consultant/ service provider’s Mobilisation	123
8.4	Consultancy Services - Review of Inception Phase:.....	124
8.5	Reporting of Progress	124
8.6	Monitoring a Time-based Contract.....	125
8.7	Monitoring a Lump-sum Contract.....	125
8.8	Unsatisfactory Performance.....	125
8.9	Delays	126
8.10	Issuing Contract Variations.....	126
8.11	Substitution of Named Key Personnel	127
8.12	Billing and Payments	128
8.13	Disputes and Conflicts	129
8.14	Force Majeure.....	132
8.15	Terminating Services Prior to End of Contract	132
8.16	Concluding the Assignment.....	133
8.17	Monitoring of Consultancy Contracts – Risks and Mitigation.....	134
	Chapter 9: Procurement (Outsourcing) of Other (Non-consultancy) services.....	135
9.1	Applicability of this Chapter to Procurement (Outsourcing) of Other (Non-consultancy) Services	135
9.2	Authorities competent to procure Consultancy and other services and their Purchase Powers.....	136
9.3	When is Procurement/ Outsourcing of Other (Non-consultancy) Services justified.....	137
9.4	Principles for Public Procurement of other (non-consultancy) services:	137
9.5	Types of Contracts in Other (Non-consultancy) Services	139
9.6	System of Selection in Other (Non-consultancy) Services	139
9.7	One Stop Government e-Marketplace (GeM)	140

9.8	Procurement Proposal (Concept Paper) for other (non-consultancy) Services	158
9.9	Obtaining Final Administrative and Budgetary Approvals	158
9.10	Procedure for Single Source Selection (SSS)	162
9.11	Procedure for Small Value and emergency Procurements of Other (Non-consultancy) Services	162
9.12	Procedure for Procurements below Rs 10 (Rupees Ten) Lakhs	163
9.13	Procedure for higher Value of Procurements	163
9.14	Preparation of the Request for Proposals (RfP)	164
9.15	Important Provisions of ITB	165
9.16	Standard Formats for Technical and Financial Proposals	172
9.17	Receipt of Bids, Evaluation and Award of Contract	172
9.18	Service Level Agreement (SLA)	178
9.19	Monitoring the Contract	179
	Annexures	180
	Annexure 1: Procurement Guidelines	181
	Annexure 2A: Delegation of Financial Powers – Indents, Contracts and Purchases for public service	182
	Annexure 2B: Suggested Structure of Schedule of Procurement Powers (SoPP) .	183
	Annexure 2C: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.1)	186
	Annexure 2D: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores	190
	Annexure 2E: List of Medical Devices and IVDs, where local manufacturers are not available, as on 17.12.2021 (as verified with the Medical Devices Manufacturing Associations)	193
	Annexure 2F: Example of Formula for Price Variation Clause	196
	Annexure 3: Format of Procurement Proposal	198

Table of Contents

Annexure 4: Terms of Reference (ToR) Format	201
Annexure 5: Bid Opening Attendance Sheet cum Report.....	203
Annexure 6: CEC Committee Minutes Format for Consultancy Services	204
Annexure 6A: Format for evaluation of Responsiveness	208
Annexure 6B: Format for Simplified evaluation of quality (LCS/ EoI)	209
Annexure 6C: Format for Detailed Technical evaluation - Summary Sheet	210
Annexure 6D Evaluation of Consultancy Firm's Experience	211
Annexure 6E Evaluation of Methodology & Work Schedule.....	212
Annexure 6F Evaluation of the Key Professionals	213
Annexure 7: Activity and Other Schedule for Other (Non-consultancy) Services ...	214
Annexure 8: Certificate for Procurement of other services without Quotation	216
Annexure 9: Purchase Committee Certificate for Procurement of other services...	217
Annexure 10: Tender Committee Minutes Format for Other (Non-consultancy) Services.....	218
Appendix	221
Appendix 1: Basic Aims and Fundamental Principles of Public Procurement	222
1.1 Basic Aims of Procurement – the Five Rs of Procurement.....	222
1.2 Refined Concepts of Cost and Value – Value for Money.....	223
1.3 Fundamental Principles of Public Procurement	227
Appendix– 2: Legal Aspects of Public Procurement	241
1.0 Relevant Provisions of the Constitution of India	241
2.0 Salient Features of the Indian Contract Act	242
3.0 Salient Features of the Indian Arbitration & Conciliation Act 1996	251
4.0 Salient Features of Competition Act, 2002 relating to Anti-competitive Practices	258
5.0 Salient Features of the Whistle Blowers Protection Act, 2011 and the Whistle Blowers Protection (Amendment) Act, 2015.....	263

Appendix 3: Electronic Procurement (e-Procurement).....	266
1.0 Electronic procurement (e-procurement)	266
2.0 Service Provider.....	266
A service provider is engaged to provide an e-procurement system.....	266
3.0 The e-Procurement Process	266

Abbreviations and Acronyms

AAEC Appreciable Adverse Effect on Competition	DGS&D Directorate General of Supplies and Disposals
BC (selling) Bill for Collection Selling (Foreign Exchange) Rate	DPIIT Department for Promotion of Industry and Internal Trade
BDS Bid Data Sheet	DSC Digital Signature Certificate
C&AG Comptroller and Auditor General (of India)	EC Evaluated Cost
C (F) A Competent (Financial) Authority	ECS Electronic Clearing System
CAPEX Capital Expenditure (model of acquisition/ procurement)	EMD Earnest Money Deposit
CBI Central Bureau of Investigation	EoI Expression of Interest (Tender)
CCI Competition Commission of India	EPF Employee Provident Fund
CEC Consultancy Evaluation Committee	ESI Employee State Insurance
CIPP Code of Integrity for Public Procurement	FA (&CAO) Financial Adviser (and Chief Accounts Officer)
CMC Contract Management Committee	FEMA Foreign Exchange Management Act
CPO Central Purchasing Organizations	FM Force Majeure
CPPP Central Public Procurement Portal	FTP Full Technical Proposal
CRAC Consignee Receipt and Acceptance Certificate	GCC General Conditions of Contract
CV Curriculum Vitae	GeM Government Electronic Market
CVC Central Vigilance Commission	GeMAR&PTS GeM Availability Report and Past Transaction Summary
CVO Chief Vigilance Officer	GFR General and Financial Rules, 2017
DFPR Delegation of Financial Power	GoI Government of India
DG Director General	GTE Global Tender Enquiry
	HOD Head of the Department
	HUF Hindu Undivided Family
	ICT Information & Communications Technology
	IEM Independent External Monitor
	IP Integrity Pact

ISO	International Organization for Standardization	QCBS	Quality and Cost Based Selection
IT	Information Technology	(S)RfP	(Standard) Request for Proposals (Document)
ITB	Instructions to Bidders (may in some instance be called Instructions to Tenderers - ITT)	REoI	Request for Expression of Interest
ITC	Instructions to consultants	RTI	Right to Information (Act)
JV	Joint Venture (Consortium)	SBD	Standard Bidding Document
L-1	Lowest Bidder	SCC	Special Conditions of Contract
LCC	Life Cycle Costing	SHG	Self Help Group
LCS	Least Cost System	SLA	Service Level Agreement
LD	Liquidated Damages	SoPP	Schedule of Procurement Powers
LEC	Lowest Evaluated Cost	SoR	Schedule of Rates
LoI	Letter of Invitation	SSS/ STE	Single Source Selection/ Single Tender Enquiry
LTE	Limited Tender Enquiry	STP	Simplified Technical proposal
MSME	(Ministry of) Micro Small and Medium Enterprises	TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/ TEC)
MSMED	Micro, Small and Medium Enterprises Development Act, 2006	TCO	Total Cost of Ownership
NGO	Non Government Organisation	ToR	Terms of Reference
NIC	National Informatics Centre	UAM	Udyam Aadhaar Memorandum
NIT	Notice Inviting Tender	URC	Udyan Registration Certificate
OPEX	Operating Expense (model of acquisition/ procurement)	VfM	(Best) Value for Money
PA	Procurement Agent(s)	WOL	Whole of Life (Cost) or Total Cost of Ownership TCO
PAN	Personal Account Number		
PPD	Procurement Policy Division		
PPP-MII	Public Procurement (Preference to Make in India), Order		
PQB	Prequalification Bidding		
PSARA	Private Security Agencies Regulation Act, 2005		
(C)PSU/ PSE	(Central) Public Sector Undertaking/ Enterprise		

Procurement Glossary

In this Manual and in the 'Procurement Guidelines', unless the context otherwise requires¹:

- 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 standardised template to be used for preparing Bidding Documents after making suitable changes for specific procurement;
- iv) "Bidder registration document" means a document issued by 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

¹ The main preferred term is within the inverted commas. Alternative equivalent terms used in certain contexts, if any, are listed in the brackets. Text within brackets is not considered for sort-order of terms.

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 (fifty) per cent of the issued share capital;
- vii) "Central Purchase Organisation" 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;
- viii) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017²;
- ix) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017³;
- x) "Competent authority" means the officer(s) who finally approves the decision.
- xi) "Consultancy services" covers a range of services that are of an advisory or professional nature and are provided by consultants. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants or communications consultants. Advisory and project related Consultancy Services which include, for example: feasibility studies, project management, engineering services, Architectural Services, finance accounting and taxation services, training and

² Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

³ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

development. It may include small works or supply of goods or other services which are incidental or consequential to such services;

- xii) "e-Procurement" means the use of information and communication technology (specially the internet) by the Procuring Entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- xiii) "Goods" includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plant, vehicles, aircrafts, ships, railway rolling stock assemblies, 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;
- xiv) "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;
- xv) "Inventory" means any material, component or product that is held for use at a later time;
- xvi) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the Procuring Entity inviting offers for pre-qualification from prospective bidders;
- xvii) "Invitation to register" means a document including any amendment thereto published by the Procuring Entity inviting offers for bidder registration from prospective bidders;
- xviii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of

imported content in the item (including all customs duties) as a proportion of the total value, in percent.

- xix) “Non-Local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for ‘Class-II local supplier’ under the Public Procurement (Preference to Make in India), Order 2017⁴;
- xx) “Non-Local supplier” means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for ‘Class-II local supplier’ under the Public Procurement (Preference to Make in India), Order 2017⁵;
- xxi) "Notice inviting tenders" (including the term ‘Invitation to bid’ or ‘request for proposals’ in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works.;
- xxii) “Other services” (including the term ‘Non-consultancy services’ in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc;
- xxiii) “Outsourcing of Services” means deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (e.g. Security Services, Horticultural Services,

⁴ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

⁵ Notified vide Order No. P-45021/2/2017-PP (BE-II) issued by Department of Promotion of Industry and Internal Trade dated 16.09.2020

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

- xxiv) "Pre-qualification (bidding) procedure" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified to participate in the procurement;
- xxv) "Pre-qualification document" means the document including any amendment thereto issued by a Procuring Entity, which sets out the terms and conditions of the pre- qualification bidding and includes the invitation to pre-qualify;
- xxvi) "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;
- xxvii) "Procurement contract" (including the terms 'Purchase Order' or 'Supply Order' or 'Withdrawal Order' or 'Work Order' or 'Consultancy Contract' or 'Contract for other 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";
- xxviii) "(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/ other 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);
- xxix) "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;
- xxx) "Procuring authority" 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;
- xxxi) "Procuring Entity" (including the term Procuring Entity and including Associated/ integrated Finance, technical departments, besides any other) means all the entities involved in one way or another, in various stages of the process, starting from need assessment to the closure of contract;
- xxxii) "Prospective bidder" means anyone likely or desirous to be a bidder;
- xxxiii) "Public Private Partnership" means an arrangement between the central, a statutory entity or any other government-owned entity, on one side, and a private sector entity, on the other, for the provision of public assets or public services or both, or a combination thereof, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is predefined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform (or are benchmarked) to specified and predetermined performance standards, deliverables or Service Level agreements measurable by the public entity or its representative;
- xxxiv) "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;
- xxxv) "Registering authority" means an authority which registers bidders for different categories of procurement.
- xxxvi) "Registered Supplier" means any supplier who is on a list of registered suppliers of the Procuring Entity or a Central Purchase Organisation;
- xxxvii) "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;
- xxxviii) "service" is defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services';
- xxxix) "Subject matter of procurement" means any item of procurement whether in the form of goods, services or works or a combination thereof;
- xl) "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.

Chapter 1: Introduction to Procurement of Consultancy/ Other Services

1.1 Procurement Rules and Regulations; and this Manual

Various ministries, departments, attached and subordinate offices, local urban bodies, public sector enterprises and other government (including autonomous) bodies (hereinafter referred as 'Procuring Entities') spend a sizeable amount of their budget on procurement of goods, works and services to discharge the duties and responsibilities assigned to them.

The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available⁶ on Government e-Marketplace (GeM). These powers have to be exercised which have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017

To ensure that these procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of service providers, there are statutory provisions; rules; financial, vigilance, security, safety, counter- trade and other regulations; orders and guidelines of the Government on the subject of public procurement (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is 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. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1)

⁶ Rule 147 of GFR, 2017 amended vide OM No. F.1/26/2018-PPD dated 02.04.2019

(g) – Right to carry on a Profession) which have implications for Public Procurement. Further, the Indian Contract Act, 1872, Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc (and amendments thereto) are major legislations governing contracts for procurement (both private and public) in general. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, especially chapter 6; Delegation of Financial Powers Rules (DFPR); Government orders regarding purchase preference like Public Procurement (Preference to Make in India), Order 2017 or other facilities to Micro and Small Enterprises etc. and the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement.

Without purporting to be a comprehensive compendium of all such 'Procurement Guidelines', this Manual is intended to serve as a portal to enter this vast area and draw attention to basic norms and practices governing public procurement.

1.2 Clarification, Amendments and Revision of this Manual

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

1.3 Applicability of this Manual

1.3.1 This manual is applicable to procurement of all "Services" defined by exception as any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf. It includes 'Consultancy Services' and 'Other (Non-consultancy) Services'. If the generic word "Services" is used in this manual, it implies both Consultancy and other services taken together.

These guidelines would not be applicable to projects funded by World Bank and other International Funding Agencies, as, such external aid/ loans etc. received are

covered under the applicable policies/ legal agreements executed as permitted under Rules 264 of GFR 2017.

1.3.2 “Consultancy services” (Rule 177 of GFR 2017) means any subject matter of procurement (which as distinguished from ‘Non- Consultancy Services’ involves primarily non-physical project-specific, intellectual and procedural processes where outcomes/deliverables would vary from one consultant to another), other than goods or works, except those incidental or consequential to the service, and includes professional, intellectual, training and advisory services or any other service classified or declared as such by a Procuring Entity but does not include direct engagement of a retired Government servant. These Services typically involve providing expert or strategic advice e.g., management consultants, policy consultants, communications consultants, Advisory and project related Consulting Services which include, feasibility studies, project management, engineering services, finance, accounting and taxation services, training and development etc.

Procurement of IT Projects should normally be carried out as Procurement of Consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:

- i) bespoke software development;
- ii) cloud based services and
- iii) composite IT system integration services involving design, development, deployment, commissioning of IT system including supply of hardware, development of software, bandwidth and operation/maintenance of the system for a define period after go-live etc.

1.3.3 “Other services” (including the term ‘Non-consultancy services’ in certain contexts) are defined by exclusion as services that cannot be classified as Consultancy Services. Other services involve routine repetitive physical or procedural non-intellectual outcomes for which quantum and performance standards can be tangibly identified and consistently applied and are bid and contracted on such basis. It may include small works, supply of goods or consultancy service, which are incidental or consequential to such services. Other services may include transport services; logistics; clearing and Forwarding; courier services; upkeep and maintenance of office/ buildings/ Estates (other than Civil & Electrical Works etc.); drilling, aerial photography, satellite imagery, mapping and similar operations etc.

1.3.4 The term 'Outsourcing of Services' implies deployment of outside agencies on a sustained long-term (for one year or more) for performance of other services which were traditionally being done in-house by the employees of Ministries/ departments (Security Services, Horticultural Services, Janitor/ Cooking/ Catering/ Management Services for Hostels and Guest Houses, Cleaning/ Housekeeping Services, Errand/ Messenger Services, and so forth). There may be Human Resources and administrative issues involved in 'outsourcing' which are beyond the scope of this manual, but nevertheless need to be addressed. Besides outsourcing, other services also include procurement of short-term stand-alone services.

1.3.5 If the other services involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled as procurement of Works. In case of fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets – e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled as Procurement of Goods rather than procurement of services.

1.3.6 It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory part of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode. For example, if the task is looking at the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

1.3.7 For sake of simplicity, this Manual for Procurement of Consultancy and Other Services is written from the point of view of procurement of Consultancy Services. A separate Chapter at the end covers the Outsourcing/ Procurement of Other (non-consultancy) Services, and points out areas where policies and procedures are different for such outsourcing/ procurements. However generic word 'Service(s)' wherever used implies both Consultancy and other services taken together.

1.3.8 The 'Procurement Entities' who can benefit from this manual include ministries, departments, or a unit thereof, or an attached or subordinate offices/units; Central Public Sector Enterprises (CPSEs) or undertakings; any other body (including autonomous bodies) substantially owned or controlled by or receiving substantial financial assistance from the Central Government. These procurement guidelines would continue to apply if these procurement entities outsource the procurement process or bundle the procurement process with other contractual arrangements or utilise the services of procurement support agency or procurement agents to carry out the procurement on their behalf. But these procurement guidelines would not apply to procurements by these procuring entities for their own use (but not for purpose of trading/ sale) from their subsidiary companies including Joint Ventures in which they have controlling share.

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

1.3.10 This Manual is to be taken as generic guidelines, which have to be necessarily broad in nature. Subject to the observance of these generic guidelines, the initiation, authorization, procurement and execution of Services Contracts undertaken by a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them. Ministries/ Departments are advised to supplement these manuals to suit local/specialized needs, by issuing their own detailed Manuals (including customized formats); Standard Bidding Documents; Schedule of Procurement Powers and Checklists to serve as practical instructions for their officers and to ensure completeness of examination of cases. Major Consultancy/ Services procuring Ministries/Departments may be having their own detailed guidelines tailored to unique individual requirements, e.g. Manuals or Procedure Orders. Many other Ministries/ Departments as well as CPSEs also have their own Procurement Manuals. For these Procuring Entities, this Manual would serve as a generic reference.

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

1.4 Authorities competent to procure Consultancy and other services and their Purchase Powers

An authority which is competent to incur expenditure may sanction the procurement of Consultancy and other services required for use in public service in accordance with the Delegation of Financial Rules, (DFPR – extracted in Annexure 2A) by following the ‘Procurement Guidelines’ described in this Manual. No separate sanction would be required for such services which are distinctly and explicitly named and included in a sanctioned and approved work/ project. Each ‘Procuring Entity’ may issue a Schedule of Procurement Powers (SoPP) adding further details to the broad delegations in the DFPR, based on the assessment of risks involved in different decisions/ approvals at various stages of Procurement Cycle. A suggested structure of such SoPP is enclosed as Annexure 2B. (Rule 145 of GFR 2017)

1.5 Basic Aims of Procurement – Five R’s of Procurement

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

- i) Right quality;
- ii) Right quantity;
- iii) Right price;
- iv) Right time and place; and

v) Right source.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods – reproduced in Appendix 1).

1.6 Principles of Public Procurement

Over and above the basic aims of procurement, the obligations of procuring authorities can be grouped into following five fundamental principles of public procurement, which all procuring authorities must abide by and be accountable for:

- i) Transparency principle;
- ii) Professionalism principle;
- iii) Broader obligations principle;
- iv) Extrinsic legal principle; and
- v) Public accountability principle.

(For more details on basic aims of procurement, please refer to Chapter 1 of the Manual for Procurement of Goods relevant portions extracted in Appendix 1. Please refer to Broader obligation principle under Appendix 1 for instructions related to registration of bidders belonging to countries sharing land border with India and Annexure-).

1.7 Standards (Canons) of Financial Propriety

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

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

- i) *Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.*

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

1.8 Public Procurement Infrastructure at the Centre

1.8.1 Procurement Policy Division

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

1.8.2 Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process. The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has

e-publishing and e-procurement modules. It is mandatory for all Ministries/ Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts. CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/ debarments; decisions taken regarding prequalification and selection of successful bid (*Rule 159 of GFR 2017*). It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal.

1.9 Preferential/Mandatory Purchase from certain sources

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

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

1.9.1 Public Procurement Policy for Micro and Small Enterprises (MSEs)-Rule 153 (ii) of GFR 2017

- i) From time to time, the Government of India (Procuring Entity) lays down procurement policies to help inclusive national economic growth by providing long-term support to small and medium enterprises and disadvantaged sections of society and to address environmental concerns. The Procurement Policy for Micro and Small Enterprises, 2012 [amended 2018 and 2021] has been notified by the Government in exercise of the powers conferred in Section 11 of the Micro, Small and Medium Enterprises Development

(MSMED) Act, 2006. Details of the policy along with the amendments issued in 2018 and 2021 are available on the MSME website⁷.

- ii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- iii) The Policy is applicable to all the Central Government Ministries / Departments / CPSUs, irrespective of the volume and nature of procurement. However, the policy is not applicable to State Government Ministries/ Departments/ PSUs.
- iv) To reduce transaction cost of doing business, MSEs are facilitated by providing them tender documents free of cost, exempting from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover and prior experience criteria during the tender process, subject to meeting of quality and technical specifications. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities⁸.
- v) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
- vi) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation

⁷ <http://dcmsme.gov.in/pppm.htm.aspx>

⁸ Notified vide OM No.F.20/2/2014-PPD(Pt.) issued by Department of Expenditure dated 29.09.2016.

where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty five) per cent of total tendered value. The 25 (twenty five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.

- vii) Within this 25% (Twenty Five Percent) quantity, a purchase preference of four (4) per cent [that is, 16 (sixteen) per cent out of 25 (twenty five) per cent] is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and three percent earmarked to women entrepreneur will be met from other MSEs.. MSEs would be treated as owned by SC/ ST entrepreneurs:

- a) In case of proprietary MSE, proprietor(s) shall be SC/ ST;
- b) In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
- c) In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.

- viii) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs

- ix) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:

- a) Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
 - b) Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c) NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
 - d) A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under this Ministry.
- x) The condition of prior turnover and prior experience may be relaxed for Startups (*Rule 173 (i) of GFR 2017*) (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document. The quality and technical parameters are not to be diluted. As defined by Department of Policy & Promotion (DIPP) an entity shall be considered as a 'start-up'-
- a) Up to ten years from the date of its incorporation/ registration.
 - b) If its turnover for any of the financial years has not exceeded Rs 100 (Rupees Hundred) crore
 - c) It is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation
 - d) Provided further that in order to obtain benefits a Startup so identified under the above definition shall be required to be recognized as Startup by DPIIT⁹.

As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry &

⁹ Notified vide OM No. F.1/7/2021-PPD-2 issued by Department of Expenditure dated 02.08.2021

Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

- xi) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
- xii) This Policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.
- xiii) Exemptions from the policy: Given their unique nature, defence armament imports shall not be included in computing 20 (twenty) per cent goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation. Monitoring of goals set under the policy will be done, in so far as they related to Defense sector, by Ministry of Defense itself in accordance with suitable procedures to be established by them.
- xiv) A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of MSME for monitoring and reviewing of Public Procurement Policy for MSEs. M/O MSME will review and/or modify the composition of the Committee as and when required. This Committee will, inter alia, review the list of 358 items reserved for exclusive purchase from MSEs on a continuous basis, consider requests from Central Government Departments, CPSUs for exemption from 25 (twenty five) percent target on a case to case basis and monitor achievements under the Policy.
- xv) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'¹⁰ Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.

¹⁰ https://sambandh.msme.gov.in/PPP_Index.aspx

- xvi) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named “CHAMPION Portal” has been set up in the Ministry of MSME.

1.9.2 Procurement Preference to Make in India-Rule 153 (iii) of GFR, 2017

To encourage ‘Make in India’ and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017¹¹. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

- a) ‘L1’ means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b) ‘Margin of purchase preference’ means the maximum extent to which the price quoted by a “Class-I local supplier” may be above the L1 for the purpose of purchase preference. It has been fixed as 20 (twenty) percent.
- c) ‘Nodal Ministry’ means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.
- d) ‘Procuring entity’ means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- e) ‘Works’ means all works as per Rule 130 of GFR- 2017, and will also include ‘turnkey works’.
- i) **Eligibility of ‘Class-I local supplier’/ ‘Class-II local supplier’/ ‘Non-local suppliers’ for different types of procurement**
 - a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity

¹¹ Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.

- b) Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

ii) Purchase Preference

- a) Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b) In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - 2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase

preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

c) In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

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

iii) **Applicability in tenders where contract is to be awarded to multiple bidders**

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

- a) In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b) In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c) If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/ 'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.
- d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
- e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I

local supplier' within the broad policy guidelines stipulated in sub-paras above.

iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.

vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.

vii) **Government E-marketplace:** In respect of procurement through the Government E-marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.

viii) **Verification of local content:**

- a) The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as

the case may be. They shall also give details of the location(s) at which the local value addition is made.

- b) In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
- c) Decisions on complaints relating to implementation of this Order shall be taken by the competent authority which is empowered to look into procurement-related complaints relating to the procuring entity.
- d) Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints.
- e) Nodal Ministries and procuring entities may prescribe fees for such complaints.
- f) False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law.
- g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph (h) below.
- h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
 - 1. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of

Expenditure through the concerned Ministry /Department or in some other manner;

2. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
3. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of uploading on the website(s) in the such a manner that ongoing procurements are not disrupted.

ix) **Specifications in Tenders and other procurement solicitations:**

- a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.

d) **Reciprocity Clause**

1. When a Nodal Ministry/Department **identifies** that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM *for appropriate reciprocal action*.

2. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all items related to that nodal Ministry/ Department, except for the list of items published by the Ministry/ Department permitting their participation.
 3. The stipulation in (2) above shall be part of all tenders invited by the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 5. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e) Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f) “All administrative Ministries/Departments ***whose procurement exceeds Rs. 1000 Crore per annum*** shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website.”
- x) **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.

- xi) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- xii) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- xiii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
 - a) While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.
 - b) In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. Procuring entities, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
- xiv) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by

any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing,

- a) reduce the minimum local content below the prescribed level; or
- b) reduce the margin of purchase preference below 20 (twenty) percent;
or
- c) exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry / Department. The Nodal Ministry / Department concerned will continue to have the power to vary its notification on Minimum Local Content.

xv) **Directions to Government companies:** In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

xvi) **Standing Committee.** A standing committee is hereby constituted with the following membership:

Secretary, Department for Promotion of Industry and Internal Trade-Chairman
Secretary, Commerce-Member
Secretary, Ministry of Electronics and Information Technology-Member
Joint Secretary (Public Procurement), Department of Expenditure-Member
Joint Secretary (DPIIT)-Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

xvii) **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.

xviii) **Ministries having existing policies:** Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal

Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.

xix) **Transitional provision:** The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.

1.10 When is Procurement of Services justified

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

- i) The inadequacy of Capability or Capacity of required expertise in-house;
- ii) The need to have qualified consultant for providing a specialized high quality service;
- iii) Need for impartial advice from a consultant (acting independently from any affiliation, economic or otherwise) to avoid conflicts of interest;
- iv) The need in some cases for Transfer of Knowledge/ Training/ Capacity and capability building as a by-product of such engagement;
- v) Need to acquire information about/ identifying and implementing new methods and systems;
- vi) Need for planning and implementing organizational change
- vii) There may be internal capacity/ capability to do the job but there are considerations of economy, speed and efficiency in relation to additional requirement/ commitment/ usage of;
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution.

1.10.2 Other (Non-consultancy) Services: In the interest of economy, efficiency and to provide more effective delivery of public services, GFR, 2017 permits Ministries/ Departments to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers. We may justify need for Procurement of other services on consideration of:-

- i) Economy, speed and efficiency and more effective delivery of public services relating to additional requirement/ commitment/ usage of:
 - a) Staff/ Management/ Organization;
 - b) Technological and Material Resources;
 - c) Money, and
 - d) Time/ Speed of execution.
- ii) An administrative policy decided by the Ministry/ Department to outsource specific (class of) services;

1.11 Principles for Public Procurement of Services

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

- i) Services to be procured should be justifiable in accordance with Para 1.10 above;
- ii) In case of Consultancy Services - well-defined scope of work/ Terms of Reference (ToR – description of services) and the time frame, for which services are to be availed of, should be determined consistent with the overall objectives of Procuring Entity. In other (non-consultancy services) Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of Procuring Entity;
- iii) Equal opportunity to all qualified service providers/ consultants to compete should be ensured;
- iv) Engagements should be economical and efficient. (*Rule 182 of GFR 2017*);

- v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards) and;
- vi) Additionally, in procurement of consultancy services, consultants should be of high quality, in line with justification as per para 1.10.1 above

1.11.2 In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. Hence Procurement of Consultancy needs to be done in a two stage process.

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

(Rule 179 of GFR 2017)

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

Laws which are applicable to Public Procurement of goods equally apply to Procurement of Consultancy and other services. These are detailed in Appendix 2. Legally speaking consultants/ service provider would be an Agent of the Principal/ Client/ Procuring Entity – Procuring Entity, to carry out the service/ assignment on its behalf. Such a relationship is covered by The Law of Agency (Section 182 to section 238, of the Indian Contract Act, 1872) and hence there exists a Principal/ Procuring Entity and Agent relationship between Procuring Entity and such consultant/ service provider. As per this law, the Procuring Entity is vicariously legally and financially liable for actions of its Agents. For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances. There is a need to be aware of such eventualities. Standard Bidding Documents should take care of this aspect.

1.13 Proactive Information Disclosures

Section 4(1) (b) of the RTI Act lays down the information to be disclosed by public authorities on a suo motu or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo motu disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated April 15, 2013.¹² The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

“Information relating to procurement made by public authorities including publication of notice/tender enquiries, corrigenda thereon, and details of bid awards detailing the name of the Vendor/ Contractor of goods/services being procured or the works contracts entered or any such combination of these and the rate and total amount at which such procurement or works contract is to be done should be disclosed. All information disclosable as per Ministry of Finance, Department of Expenditure’s O.M. No 10/1/2011-PPC dated 30th November, 2011¹³ (and 05th March 2012¹⁴) on Mandatory Publication of Tender Enquiries on the Central Public Procurement Portal and O.M. No. 10/3/2012- PPC dated 09th January 2014 on implementation of comprehensive end-to-end e-procurement should be disclosed under Section 4 of the Right to Information Act.

1.14 Public Procurement Cycle

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

- i) Preparation of Concept Paper/ Procurement Proposal and obtaining in principle approvals;
- ii) Preparation of the ToR (in case of consultancy services)/ Activity Schedule (in case of other/ non-consultancy services), cost estimate and seeking administrative and budgetary approval;

¹² <http://cic.gov.in/GuidelinesOnProActive.pdf>

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

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

- iii) In case of Procurement of Consultancy Services - Short list of consultants - EoI formulation, publication, receipt of proposals and evaluation;
- iv) Preparation and issuance of the RfP; Receipt of proposals; Evaluation of technical proposals: consideration of quality; Evaluation of financial proposals; Selection of winning proposal; Negotiations and award of the contract to the selected firm; and
- v) Monitoring of Assignments.

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

1.15 Procurement Proposal (Concept Paper) for Consultancy and other services

1.15.1 A critical part of the procurement of *Services* process is preparing an appropriately staffed and budgeted Procurement Proposal/ Concept Paper (which serve the role that an Indent serves in procurement of Goods).

1.15.2 Preparing Procurement Proposal/ Concept Paper

As a first step towards procurement of services, a formal written brief Proposal and Justification for the Services should be prepared (*Please see a suggested format in Annexure 3: Format of Procurement Proposal*). It is akin to the Indent for Materials/ Material Requisition in case of Procurement of Goods. The User should prepare in simple and concise language the requirement, purpose/ objectives and the scope/ outcomes of the assignment and justify the assignment based on analysis of in-house available capacity/ capability. The eligibility and pre-qualification criteria to be met by the consultants/ service providers should also be clearly identified at this stage. Justifications for procurement of Consultancies/ Services as given in Para 1.10 may be kept in view. It is the basic document for initiating procurement of services. It is also the document from which the subsequent detailing of Terms of Reference (in case of consultancy services)/ Activity Schedule (in case of other/ non-consultancy services) is drawn up. A procurement proposal should contain:

- i) **Purpose/ Objective Statement of Services**

"Purpose/ Objective Statement of Services" should be prepared by the user. One of the important content of this statement is description of service to describe the subject matter of procurement which would be used in all subsequent documents. Bringing out the background and context, this should justify how the proposed procurement of services would fit in with short-term and strategic goals of Procuring Entity. Making such a statement is important to put the need for services in clear perspective. It may seem elementary or academic, but is a necessary and critical first step in properly designing a procurement proposal.

ii) **Service Outcome Statement**

Once the "Purpose/ Objective of Services" has been clearly defined, the next step is to formulate a 'Service Outcome Statement'. This should list out qualitatively and quantitatively the outcomes expected from the Procurement of Services, as well as the expected Time-frame and a rough estimate of cost of Procurement of services (including related costs to be incurred by the organization). At this stage, it is not necessary go into details of all the activities required to achieve the service outcomes, but it should list at least the broad activities, would help in putting a rough estimate to the cost of the assignment. A 'Service Outcome Statement' should provide a concrete basis for subsequently defining the type and amount of work that needs to be done by service provider and the time-frame within which the output needs to be received by the user. The estimated cost is needed to ascertain the level of approval necessary as per SoPP.

iii) **Justification for the procurement of Services**

The Concept Paper/ Procurement proposal should analyse the capabilities/ capacities required to carry out the assignment. It should also analyse the available in-house capabilities/ capacities and compare these with the ones required for the assignment. Based on this assessment the Procurement should be justified in the light of para 1.10.1.

1.15.3 In-principle Approval for initiating procurement of Services

Based on the justification contained in the Procurement Proposal, in-principle administrative approval and budgetary sanction for initiating procurement of such services should be accorded by the Competent Authority (CA) as laid down in SoPP.

Chapter-1: Introduction to Procurement of Consultancy/ Other Services

Further stages may be proceeded with, only after such approvals. (Rule 181 of GFR 2017)

Chapter 2: Consultants, service providers and Governance Issues

2.1 Types of consultants/ service providers

The term consultants/ service providers includes a wide variety of private and public entities, including Consultancy firms, engineering firms, Architectural Firms/ consultants, construction management firms, management firms, procurement agents, inspection agents, auditors, investment and merchant bankers, universities/ educational institutions, research institutions, government agencies, nongovernmental organizations (NGOs) and individuals/experts or their joint ventures. These can be grouped as:

2.1.1 Consortium of consultants/ service providers

In large and complex assignments consultants/ service providers may associate with each other to form a consortium to complement their respective areas of expertise, to increase the technical responsiveness of their proposal, and make larger pools of experts available or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a Joint Venture (JV) or a sub consultancy. In case of a JV, all members of the JV shall sign the contract and shall be jointly and severally liable for the entire assignment. After the short list is finalised, and the Request for Proposal (RfP) is issued, any association in the form of a JV or sub consultancy among the short-listed firms shall be permissible in accordance with provisions stated in the RfP. Under such circumstance, one of the shortlisted consultants/ service providers must become the lead member of the consortium. The Procuring Entity only deals with the lead member of consortiums for all the purposes. Bid documents should clearly specify whether JVs are allowed to bid (in case of complex and large assignments, say above certain values (say - Rs. 5 (Rupees five) crore). Maximum number of partners in JV shall be limited (say – three). In case JVs are permitted to bid, it should be clarified what qualifications are to be collectively (clubbed together) met by the JV partners (say experience of particular consultancy, Financial Turnover etc) and what each partner has to individually and separately

meet (financial soundness). In this case it should also be specified that each partner should meet at least 25% (and the lead partner at least 50%) out of the qualifying limit in case of experience of particular consultancy and financial turnover, if any.

Conflicting Association: A firm shall submit only one proposal, either individually or as a JV partner in another proposal. If a firm, including a JV partner, submits or participates in more than one proposal, all such proposals shall be disqualified. This does not, however, preclude a firm from participating as a sub-consultant or an individual consultant to participate as a team member in more than one proposal when circumstances justify but only if permitted by the RfP document.

2.1.2 Consultancy or Service Providing Firms

The main source of consultants and service providers is Consultancy or Service providing firms of diverse specializations that provide teams to Clients. These firms provide project preparation services, project implementation supervision services, training, advisory services, and policy guidance. Such firms are normally classified as either international – firms that have international experience and are capable of undertaking work at international level at international rates; or national – firms that may not have international exposure and normally undertake assignments only within that country, usually at significantly lower rates.

2.1.3 Individual consultants/ service providers

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

providers are classed as either international or national, depending on their level of expertise and their international experience and exposure.

2.1.4 Specialized Agencies and Institutions

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

2.1.5 Non-governmental Organizations (NGO)

There may be distinct advantage in use of Nongovernmental organizations (NGOs) in Projects which emphasize experience in community participation and in-depth local knowledge – for example, Projects related to Corporate Social Responsibility (CSR).

2.1.6 Retired Government Servant

Rule 177 of GFR, 2017, says that the consulting services do not include direct engagement of retired Government servants. They should not be engaged against regular vacant posts as consultant under this rule. Retired Government servants can be engaged only for the specific task and for specific duration as consultant. They should be assigned clear output related goals.

2.2 Code of Integrity for Public Procurement (CIPP)

2.2.1 Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities and the bidders/ suppliers/ contractors/ consultants/ service providers involved in procurement process must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Need Assessment). The bidders/ suppliers/ contractors/ consultants/ service providers should be asked to sign a declaration for abiding by a Code of Integrity for Public Procurement in registration applications and

in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered suppliers/ contractors/ consultants/ service providers, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

2.2.2 Code of Integrity for Public Procurement: Procuring authorities as well as bidders, suppliers, contractors and consultants/ service providers should observe the highest standard of ethics and should not indulge in the following prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts:

- i) **“Corrupt practice”**: making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution;
- ii) **“Fraudulent practice”**: any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract;
- iii) **“Anti-competitive practice”**: any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
- iv) **“Coercive practice”**: harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- v) **“Conflict of interest”**: participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the

bidding firm or their personnel have relationships or financial or business transactions with any official of Procuring Entity who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Procuring Entity with an intent to gain unfair advantage in the procurement process or for personal gain; and

- vi) **“Obstructive practice”**: materially impede the Procuring Entity’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Procuring Entity’s rights of audit or access to information;

2.2.3 Conflict of Interest in case of consultants

- i) The consultant is required to provide professional, objective, and impartial advice, at all times holding the Procuring Entity’s interests paramount, strictly avoiding conflicts with other assignments or his/its own corporate interests, and acting without any consideration for future work.
- ii) The consultant has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its/his capacity to serve the best interest of its client/Procuring Entity. Failure to disclose such situations may lead to the disqualification of the consultant or termination of its/his contract during execution of the assignment.
- iii) Without limitation on the generality of the foregoing, and unless stated otherwise in the data sheet for the RfP document, the consultant shall not be hired under the circumstances set forth below:
 - a) **Conflicting activities**: a firm that has been engaged by the client to provide goods, works, or non-consultancy services for a project, or any of its affiliates, shall be disqualified from providing Consultancy service resulting from or directly related to those goods, works, or non-Consultancy services. Conversely, a firm hired to provide consultancy services for the preparation or implementation of a project, or any of its

affiliates, shall be disqualified from subsequently providing goods or works or no consultancy services resulting from or directly related to the consultancy services for such preparation or implementation;

- b) **Conflicting assignments:** Consultants (including its experts and sub-consultants) or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant for the same or for another Procuring Entity; and
- c) **Conflicting relationships:** A consultant (including its/his experts and sub-consultants) that has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in any part of: (i) the preparation of ToR for the assignment; (ii) selection process for the contract; or (iii) supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the client throughout the selection process and execution of the contract.

2.2.4 Unfair Competitive Advantage in case of consultants

Fairness and transparency in the selection process require that the consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consultancy services related to the assignment in question. Such unfair competitive advantage is best avoided by full transparency and by providing equal opportunity so that all firms or individuals interested or involved have full information about a service assignment and its nature, scope, and background information. To that end, the request for proposals and all information would be made available to all short listed consultants simultaneously.

2.2.5 Obligations for Proactive Disclosures

- i) Procuring authorities as well as bidders, suppliers, contractors and consultants/ service providers, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in

any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and

- ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;
- iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Procuring Entity. Similarly, voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidders' actions in the tender and subsequent contract.

2.2.6 Punitive Provisions: Without prejudice to and in addition to the rights of the Procuring Entity to other penal provisions as per the bid documents or contract, if the Procuring Entity comes to a conclusion that a (prospective) bidder/contractor/ Supplier/ consultant/ service provider, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Procuring Entity may take appropriate measures including one or more of the following:

- i) if his bids are under consideration in any procurement
 - a) Forfeiture or encashment of bid security
 - b) calling off of any pre-contract negotiations, and;
 - c) rejection and exclusion of the bidder from the procurement process
- ii) if a contract has already been awarded
 - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Procuring Entity,;
 - b) Forfeiture or encashment of any other security or bond relating to the procurement;
 - c) Recovery of payments made by the Procuring Entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:

- a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Procuring Entity for a period not less than one year;
- b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
- c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

2.2.7 Conduct of Public Servants in Public Procurement - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice. Officials sent to firm's premises for inspections/ meetings may mistakenly presume entitlement to hospitality from the firm, even if other arrangements are available at the location.	Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular supplier/ contractor/ consultant/ service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.
Gifts: Gifts from suppliers/ contractors/ consultants/ service providers may tend to cross the limits of ethical/ occasional/ routine/ modest/ normal business practice, especially on festive season. Since the value of the gift may not be known to the recipient, it may cause inadvertent violation of Conduct rules.	Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Any gift received inadvertently in violation of above, must immediately either be returned or else reported and deposited in Toshakhana/ Treasury.

Private Purchases from Official Suppliers/ contractors/ consultants/ service providers: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers/ contractors/ consultants/ service providers having official dealings or its associates (especially against Rate Contracts).	Public purchasers must not seek or accept special facilities or discounts on private purchases (particularly same items which are being ordered officially) from contractors, suppliers/ contractors/ consultants/ service providers (including Rate Contract holders) with whom they have official dealings.
Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours (donations, advertisements for souvenirs, and contributions in cash or kind) in relation to sponsoring of cultural, social, charitable, religious, or sporting events, in the false belief that since he/ she is personally not benefitted, it would not be a violation of CIPP.	Public purchasers must never get involved in any non-official pecuniary transaction with the contractors, suppliers/ contractors/ consultants/ service providers including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events from.

2.3 Integrity Pact (IP)

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

2.3.2 Ministry of Finance, Department of Expenditure have mandated¹⁵ Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the Ministries/ Departments with approval of the Minister in charge. As guidance, the threshold should be such as to cover bulk (80-90%) of its procurement expenditure.

¹⁵ OM No.14(12)/ 2008- E-II(A) dated 19th July 2011

2.3.3 “The pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- iii) Promise on the part of Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- iv) Undertaking (as part of Fall Clause) by the Bidders that they have not and will not sell the same material/ equipment at prices lower than the bid price;
- v) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- vi) Bidders to disclose the payments to be made by them to agents/ brokers or any other intermediary;
- vii) Bidders to disclose any past transgressions committed over the specified period with any other company in India or abroad that may impinge on the anti-corruption principle;
- viii) Integrity Pact lays down the punitive actions for any violation;
- ix) IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization in consultation with Central Vigilance Commission. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact. Government of India organizations and Public Sector Undertakings desirous of implementing Integrity Pact are required to select at most three persons (below the age of 70 (seventy) years) of high integrity and reputation as Independent

External Monitors (IEM) after due diligence and forward to the CVC for its approval. Only those officers of Government of India departments or Public Sector Undertakings, who have retired from top management positions, would be considered for appointment as IEM, provided they are neither serving or retired from the same organization. Eminent persons, retired judges of High/ Supreme Courts, executives of private sector of considerable eminence could also be considered for functioning as Independent External Monitors. The appointment of Independent External Monitors would be for an initial period of three years and could be extended for another term of two years (maximum tenure of five years). Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT);

- x) In tenders meeting the criteria of threshold value/ nature of procurement - Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway;
- xi) **Role/ Functions of IEMs:** The Monitors would not be subject to instructions by the representatives of the parties and should perform their functions neutrally and independently. They would review independently and objectively, whether and to what extent parties have complied with their obligations under the Integrity Pact. For this purpose, they would have access to all contract documents/ books of accounts of the bidders in case of any allegation of violation of any provisions of the Integrity Pact or payment of commission, whenever required. The IEMs will have the option to participate in such meetings among the parties related to the project provided such meetings could have an impact on the contractual relations between the parties. Ideally all IEMs of an organization should meet once every two months to take stock of ongoing tendering process. The IEMs would examine all complaints received by them and give their recommendations/ views to the designated officer of the Procuring Entity, at the earliest. The Monitors would also inform the Procuring Entity, if they notice or have reason to believe, a violation of

the Integrity Pact. They may also send their report directly to the Central Vigilance Commission, in case of suspicion of serious irregularities requiring legal/ administrative action. At least one IEM would be invariably cited in the NIT. However for ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process, the matter should be examined by the full panel of IEMs, who would look into the records, conduct an investigation, and submit their joint recommendations. The recommendations of IEMs would be in the nature of advice and would not be legally binding. IEMs may not be equated with consultants in the Procuring Entity. Their role is independent in nature and the advice once tendered would not be subject to review. The role of the Chief Vigilance Officer (CVO) of Procuring Entity shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO, if a complaint is received by him or directed to him by the CVC. As per para 5.13 of CVC OM No. 05/01/22 issued vide letter No. 015/VGL/091 dated 25.01.2022, in the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose. In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

2.4 Debarment of Suppliers/ contractors/ consultants/ service providers

2.4.1 Registration of suppliers/ contractors/ consultants/ service providers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-

- i. A bidder shall be debarred if he has been convicted of an offence-
(a) under the Prevention of Corruption Act, 1988; or*

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

- ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.*
- iii. A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.*
- iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment*

2.4.2 Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject¹⁶.

2.4.3 Guidelines on Debarment of firms from Bidding

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

Definitions

¹⁶ Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021

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

The terms “banning of firm”, ‘suspension’, ‘Black-Listing’ etc. convey the same meaning as of “Debarment”.

2. Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by a Ministry/ Department/organizations, keeping in view of the following:

- i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
- ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
- iii. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the Ministry/Department, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.
- iv. It shall not be circulated to other Ministries/ Departments. It will only be applicable to all the attached/ subordinate offices, Autonomous bodies,

Central Public Sector Undertakings (CPSUs) etc. of the Ministry/ Department issuing the debarment Order.

- v. The concerned Ministry/ Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 - vi. Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary/Additional Secretary as competent authority to debar the firms.
 - vii. Ministry/ Department that issued the order of debarment can also issue an Order for revocation of debarment before the period of debarment is over, if there is adequate justification for the same. Ordinarily, the revocation of the Order before expiry of debarred period should be done with the approval of Secretary concerned of Ministry/Department.
 - viii. The Ministry/Department will maintain list of debarred firms, which will also be displayed on its website.
 - ix. Debarment is an executive function and should not be allocated to Vigilance Department.
3. It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.

4. Debarment across All Ministries/ Departments

- i. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and

the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.

- ii. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal.
- iii. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
- iv. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
- v. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
- vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.

5. Revocation of Orders

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

6. Other Provisions (common to both types of debarment)

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

2.4.4 Safeguarding Procuring Entity's Interests during debarment of supplier/ contractor/ consultant/ service provider:

Suppliers/ contractors/ consultants/ service providers are important assets for the procuring entities and punishing delinquent suppliers/ contractors/ consultants/ service providers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers/ contractors/ consultants/ service providers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers/ contractors/ consultants/ service providers and in cases of less serious misdemeanours, the endeavour should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

(Rule 151 of GFR 2017)

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

3.1 Types of Contracts

There are different basis for linking payments to the performance of services (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of assignment. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/failure of the contract.

Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption along with risks and mitigation measures. Mostly used types of contracts are:

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

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

3.2 Lump Sum (Firm Fixed Price) Contract

3.2.1 The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the Procuring Entity shall use this form of contract. Consultant's proposal is deemed to include all prices - no arithmetical correction

or price adjustments are allowed during evaluation. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. In view of Risks mentioned below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

3.2.2 Lump Sum Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the required output of the consultants/ service providers are clearly defined. The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the assignment should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.

3.3 Time-Based (Retainer-ship) Contract

3.3.1 In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who in consultancy contracts are normally named, but not so in other services) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant/ service provider are retained for a pre-decided period. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract is appropriate when Lump sum contract is not feasible due to difficulties in defining the scope and the length of services, either because the inputs required for attaining the

objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary.

Because of risks and mitigations mentioned below, this type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments etc.

3.3.2 Time-Based Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use paid staff in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.4 Percentage (Success/ contingency Fee) Contract

3.4.1 Percentage (Success/ Contingency Fee) contracts directly relate the fees paid

to the consultant/ service provider to the estimated or actual project cost, or the cost of the goods procured or inspected. Since the payment is made after the successful realisation of objectives, it is also called success (or contingency) fee contract. The final selection is made among the technically qualified consultants/ service providers who have quoted the lowest percentage while the notional value of assets is fixed.

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

3.4.2 Percentage Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality and scope of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality, scope and the timing of deliverables and certificate for its acceptability may be recorded. Payment should be made only against certificate of acceptance of deliverables.
Time over-run: As time is not linked to the payment. There may be tendency for the consultant/ service provider to save on deployment of resources which may result in time-over-run.	While the payments are not linked to time, the assignment should be monitored per month to ensure that the output per month is in line with planned and estimated time-line.
Bias against Economic solutions: Since the percentage payment is linked to the total cost of the project, in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged.	Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services.

3.5 Retainer and Success (Contingency) Fee Contract

3.5.1 In Retainer and Success (Contingency) fee contracts the remuneration of the consultant includes a retainer (time based, monthly payment) and a success fee (Percentage based), the latter being normally expressed as a percentage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Percentage Contracts.

Due to risks and mitigations discussed below, Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing

companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organisational restructuring/ change.

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

3.6 Indefinite Delivery Contract (Price Agreement)

3.6.1 These contracts are used when Procuring Entity need to have “on call” specialized services, the extent and timing of which cannot be defined in advance. This is akin to the system of 'Rate Contracts' or framework contracts in the procurement of Goods. There is no commitment from Procuring Entity for the quantum of work that may be assigned to the consultant/ service provider. The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time/ quantum of service actually used. The consultant/ service provider shall be selected based on the unit rate quoted by them for providing the services.

These are commonly used to retain “advisers” or avail services 'on-call' - for example; expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, Document Management, Taxi Services, Temporary Manpower Deployment and so forth – normally over a period of a year or more.

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	<p>The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization.</p> <p>Such contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit.</p> <p>A system of monthly reporting of payouts and quantum of work achieved by the consultant/</p>

3.6.2 Indefinite Delivery Contracts - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
	service provider to CA should be instituted to enable supervision. In the report a monthly payout benchmark may be kept, above which the report may be required to be sent to a level above CA.
The quality and Scope of the Output/ deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/ service provider to cut corners on quality, scope and timing of the output/ deliverables by saving on resources employed.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.
Performance in each time period is not linked to the payment. There may be tendency for the consultant/ service provider to use resources in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of payouts and quantum of work achieved by the consultant/ service provider to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in such contracts, as the output may not be achieved in the estimated time.	This type of contract should include an upper limit of total payments to be made to the consultants/ service providers to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

3.7 Systems of Selection of service providers

3.7.1 Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important though indirect determinant for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is Therefore, normally done in a two stage process. In the first stage,

likely capable sources are shortlisted, if need be through an 'Expression of Interest' (EoI) through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. In the second stage, the shortlisted consultants are invited to submit their technical and financial (RfP) proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.

3.7.2 The relative importance of Quality and Price aspects may vary from assignment to assignment depending on complexities/ criticality of quality requirements, internal capability of Procuring Entity to engage and supervise the assignment, as well as the value of procurements. Hence different systems of selection of consultants/ service providers are designed to achieve appropriate relative importance (weightage) of Quality and Price aspects. Decision on system of selection is normally preceded by an assessment of the capacity of the user to engage and supervise the implementation of proposed assignment. The selection method chosen depends to some extent on this assessment. Selection of system of selection also should take into account the likely field of Bidders.

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

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

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

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

3.7.5 It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid¹⁷. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

- 1) The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
- 2) The qualification criteria were not unduly restrictive; and
- 3) Prices are reasonable in comparison to market values¹⁸

3.8 Price based System - Least Cost Selection (LCS)

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

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

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

scheme a minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids. The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders are returned unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. This system of selection is roughly the same as the price based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works. In Finance Ministry's 2006, 'Manual of Policies and Procedure of Employment of consultants/ service providers', this is called QCBS, which is not the generally prevalent nomenclature. (Rule 193 of GFR 2017, also see para 6.9.1)

LCS is considered suitable for recruiting consultants/ service providers from firms in most assignments that are of a standard or routine nature (such as engineering design of non-complex works) where well established practices and standards exist. It is the simplest and the quickest system of selection and under normal circumstances, this method of evaluation shall be used as default since it allows for minimum satisfactory technical efficiency with economy. Justification must be provided if a selection method other than LCS is to be used.

3.8.2 Least Cost Selection - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be	It is important to lay down as objective a scheme of marking as possible. Cases

3.8.2 Least Cost Selection - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
subjective.	where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.9 Quality and Cost Based Selection (QCBS)

3.9.1 In QCBS selection, minimum qualifying marks (normally 70-80 (seventy – eighty) out of maximum 100 (hundred) marks) as benchmark for quality of the technical proposal will be prescribed and indicated in the RfP along with a scheme for allotting marks for various technical criteria/ attributes. During evaluation of technical proposal, quality score is assigned out of the maximum 100 (hundred) marks, to each of the responsive bids, as per the scheme laid down in the RfP. The consultants/ service providers who are qualifying as per the technical evaluation criteria are considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers and other financial offers are returned unopened to bidders. The Financial Proposals are also given cost-score based on relative ranking of prices, with 100 (hundred) marks for the lowest and pro-rated lower marks for higher priced offers. The total score shall be obtained by weighting the quality and cost scores and adding them. The weight given to the technical score may not be confused with the minimum qualifying technical score (though they may in some case be equal). For example, the weightage given to cost score may be 30% (thirty percent) and technical score may be given weightage of 70% (seventy percent, but should never be more than 80%). The ratio of weightages for cost and Technical score could also be 40:60 (forty: sixty) or 50:50 (fifty: fifty) etc. However, the weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. The proposed weightings for quality and cost shall be specified in the RfP. The firm obtaining the

highest total score shall be selected. *It may be noted that theoretically QCBS system with weight of 100% (hundred percent) for the 'cost' approximates the price based LCS system.* In Finance Ministry's 2006 'Manual of Policies and Procedure of Employment of consultants', this is called CQCCBS, which is not the generally prevalent nomenclature. This method of selection shall be used for highly technically complex and critical assignments where it is justifiable to pay appropriately higher price for higher quality of proposal. Table 3 provides a suggestive weighting for QCBS. *(Rule 192 of GFR 2017, also see para 6.9.2)*

Table 3. A suggestive weighting of scores for QCBS

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

3.9.2 QCBS - Risks and Mitigations

Risk	Mitigation
Inappropriate Selection of QCBS: There is a possibility that QCBS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment.	Selection of QCBS should be justified and applied only under circumstances mentioned above.
Weightage of Technical: Cost may not be proportional to quality requirements	Weightage different from 70:30 (seventy: thirty) should be adequately examined and justified.
Technical criteria may not be relevant to realization of quality of assignment.	Technical criteria selected should be relevant and proportional to the requirement of quality of assignment and the selection process should be rigorous enough to ensure that on one hand no technically unsatisfactory bids should be

3.9.2 QCBS - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
	able to get past a loose criteria and on the other hand no technically satisfactory offer should get ruled out by tight criteria.
Marking Subjectivity: The scheme of marking or its application may be subjective.	It is important to lay down as objective a scheme of marking as possible. Cases where subjectivity is unavoidable (as in evaluation of methodology etc), a system of grading responses and their marking may be laid down in the bidding documents. Procuring Entity should also have a system of conciliation and moderation of widely disparate markings by different members of evaluation committee.

3.10 Direct Selection: Single Source Selection (SSS)

3.10.1 Under some special circumstances, it may become necessary to select a particular consultant/ service provider where adequate justification is available for such single-source selection in the context of the overall interest of Procuring Entity. In Finance Ministry's 'Manual of Policies and Procedure of Employment of consultants', this is called DNS, which is not the generally prevalent nomenclature. (*Rule 194 of GFR 2017, also see para 6.9.3*) The selection by SSS/ nomination is permissible under exceptional circumstance such as:

- i) tasks that represent a natural continuation of previous work carried out by the firm;
- ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance;
- iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise;
- iv) At times, other PSUs or Government Organizations are used to provide technical expertise. It is possible to use the expertise of such institutions on a SSS basis;
- v) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or

Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single-source selection.

Procuring Entity shall ensure fairness and equity, and shall have a procedure in place to ensure that:

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

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

- a) The Secretary, in case of ministries/departments.
 - b) The Board of directors or equivalent managing body, in case of Public Sector Undertakings, Public Sector Banks, Insurance companies, etc;
 - c) The Chief Executive of the organisation where such a managing body is not in existence.
1. The report relating to such awards on nomination basis shall be submitted to the Secretary/Board/Chief Executive /equivalent managing body, every quarter.
 2. The audit committee or similar unit in the organisation may be required to check at least 10% of such cases.

3.10.2 SSS - Risks and Mitigations	
<i>Risk</i>	<i>Mitigation</i>
Inappropriate Selection of SSS: There is a possibility that SSS system is selected where LCS or other systems would have been more appropriate considering the quality requirements or the capability of Procuring Entity to monitor the assignment. The assignment may be split into parcels to avoid competitive selection systems or to avoid obtaining higher level approvals for SSS.	Full justification for single source selection should be recorded in the file and approval of the competent authority (schedule of Procurement Powers – SoPP should severely restrict powers for SSS selection) obtained before resorting to such single-source selection. In direct selection, the Procuring Entity should ensure fairness and equity and the required consultancy/ other services are not split into smaller sized procurement

	to avoid competitive processes.
Cost may be unreasonably High: The single consultant/ service provider is likely to charge unreasonably high price.	Procuring Entity must have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature. If necessary negotiations may be held with the consultants/ service providers to examine reasonableness of quoted price.

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

3.11.1 GFRs 2017 provide three methods for selection/evaluation of consultancy proposals viz. Quality and Cost Based Selection (QCBS), Least Cost System (LCS) and Single Source Selection (SSS). The Fixed Budget Based Selection(FBS) method is hereby also allowed for selection of consultants. Under this method, cost of the consulting services shall be specified as a fixed budget in the tender document itself. FBS may be used when :

- (i) the type of consulting services required is simple and/or repetitive and can be precisely defined; and
- (ii) the budget can be reasonable estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and
- (iii) the budget is sufficient for the consultant to perform the assignment.

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

- (i) By a competitive selection process, based only on quality, using specific marking criteria for quality in the manner indicated in Rule 192(i) of the GFR. The proposal with the highest technical score that meets the fixed budget requirement shall be considered for placement of contract.
- (ii) In cases of repetitive or multiple assignments, by empanelling suitable quality criteria. Thereafter, selection of a specific consultant for a specific assignment from such panel shall be based on overall considerations of public interest

including timeliness, practicability, number of other assignments already given to that consultant in the past, etc. In such cases the budget for each assignment shall also be fixed by the procuring entity.

Chapter 4: Preparing for Procurement of Consultancy Services

4.1 Preparation of Terms of Reference (ToR)

4.1.1 ToR is akin to Description, Quantity and Technical Specification in Procurement of Goods. This is the first step in the selection of the consultants once a need has been identified. A ToR explains the purpose/ objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Procuring Entity and consultant, expected results, and deliverables of the assignment. ToR is important for an understanding of the assignment and its correct execution to ensure that the objectives of assignment are achieved. It reduces the risk for the Procuring Entity of unnecessary extra work, delays, and additional expenses of the Procuring Entity. In addition, it helps reduce for the bidders the risk of ambiguities during the preparation of bidder's proposals, contract negotiation, and execution of Consultancy.

4.1.2 Hence ToR should be comprehensive and unambiguous. However, it should not be too detailed and inflexible, so that competing consultants may be in a position to propose their own methodology and staffing. Bidders shall be encouraged to comment on the ToR in their proposals. The ToR shall include:

- i) Procuring Entity's organisation background and Project background;
- ii) Purpose and Service Outcomes Statement of the assignment; (refer to chapter 1)
- iii) Detailed scope of work Statement including schedule for completing the assignment;
- iv) Expected requirement of key professionals and kind of expertise;
- v) Capacity-building programme and transfer of knowledge, if any;
- vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
- vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;

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

4.1.3 A template for developing a ToR is given at Annexure 4. It should cover following aspects:

i) **Detailed Scope of Work**

As part of the ToR, at its simplest, the 'Detailed Scope of Work ' will contain the type and volume of activity to be undertaken and the time-frame of activity involved to achieve the Purpose and Service Outcomes as envisage in the 'Brief proposal and Justification of the Services' (refer chapter 1). Starting from end-outcomes backwards, the process to achieve the outcomes is broken down into a discrete number of interrelated tasks, which the consultant will have to undertake. In consultancy Services, the 'Detailed Scope of Work' should describe only the activities, not the approach or methodology by which the results are to be achieved, since these are the task of the consultants. However, suggestions may be provided on the approach or the methodology that the consultants could or should use to execute the assignment. After the tasks are identified, a logical sequencing of the tasks must be determined. Usually a simple bar chart (or Gantt-chart) is the best way to illustrate required outputs over time and their relationship to each other. The 'Detailed Scope of Work ' contains such a sequence of tasks over a timeline and also tangible outputs and activities such as reports, workshops, or seminars.

ii) **Expected requirement of key professionals and kind of expertise**

Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as “activity based” ToR as opposed to “position-based” ToR. The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly

defined, and a degree of flexibility is required— this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

iii) **Deliverables and Reports Requirements**

The assignments deliverables and reporting should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the Procuring Entity well informed and not forcing consultants to spend an excessive amount of time preparing minor reports. The ToR should indicate the format, frequency, and content of reports as well as the number of copies, the language, and the names of the prospective recipients of the reports. For all major reports, an executive summary is recommended as a separate section. Depending on the assignment, the following reports are usually required;

- a) **Inception Report:** This report should be submitted about six weeks after the commencement date. Any major inconsistency in the ToR, staffing problems, or deficiency in Procuring Entity's assistance that have become apparent during this period should be included. The inception report is designed to give the Procuring Entity confidence that the assignment can be carried out as planned and as agreed upon in the contract, and should bring to its attention major problems that might affect the direction and progress of the work.
- b) **Progress Reports:** These reports keep the Procuring Entity regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due. Depending on the assignment, progress reports may be delivered monthly or bimonthly. For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory. For technical assistance and implementation supervision, for instance, construction, progress reports are best submitted monthly. Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule. Photographs with time-

stamping are a quick and easy way of conveying the status of a project, and their use in progress reports should be encouraged. For technical assistance services, progress reports also serve as a means of setting out the work program for the following months. Each team member usually contributes to the preparation of the monthly report.

- c) **Interim Reports:** If the assignment is phased, interim reports are required to inform the Procuring Entity of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, the Procuring Entity should discuss the draft interim reports with consultants in the field. The Procuring Entity should not take more than 15 (fifteen) days to review and approve draft interim reports.
 - d) **Final Report:** The final report is due at the completion of the assignment. The Procuring Entity and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the Procuring Entity, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.
- iv) Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.
 - v) Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way – a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and reality check is necessary, while preparing this statement.
 - vi) **Procedure for review of the consultancy after award of contract**

In consultancy services, the Consultancy Monitoring Committee (CMC), and procedure for review and approval of work of the consultant after the award of contract should also be declared and adhered to.

(Rule 185 of GFR 2017)

4.2 Estimating Costs, Setting the Budget, and Seeking Approval

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

- i) **Categories:** Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used); and (b) reimbursable costs. Depending on the nature of the assignment, cost estimates may be prepared either in local currency or with a combination of local plus foreign currencies. Cost estimate should provide for forecast of inflation during the period of assignment.
- ii) **Estimated Resources:** The cost estimate shall be based on the Procuring Entity's assessment of the resources needed to carry out the assignment:
 - a) Staff time
 - b) logistical support (City, National and International Travels/ Trips and durations), and
 - c) physical inputs (for example, vehicles, laboratory equipment)
 - d) Miscellaneous (Support services, contingencies and Profit element, taxes and duties)
- iii) **Rates:** Costs are normally estimated using unit rates (staff remuneration rates, reimbursable expenses) and quantities (exceptionally some items may be estimated on the lump-sum basis or percentage basis – Contingencies and support services). Rates of payment should be identified (including applicable taxes if any) in local and foreign currency for Staff Time, Logistics Costs and Costs of various physical inputs/ support services.
- iv) **Staff Costs:** The estimate of staff cost is based on an estimate of the personnel time (staff-months or staff-hours) required for carrying out the assignment taking into account the time required by each expert, his or her billing rate, and the related direct cost component. In general, staff

remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. It is useful to prepare a bar chart indicating the duration of each main activity (work schedule) and time to be spent by different members of the consultancy team (staffing schedule) distinguishing tasks to be carried out by foreign and local consultants. Due consideration should be given to the expected breakdown of a consultant's time in the home office and client's countries and away from home office allowance.

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

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

- i) Professional and support staff;
- ii) Travel, Hotel, and transport;
- iii) Mobilisation and demobilisation;
- iv) Office rent, Furniture/ Equipment, supplies, Utilities, IT equipment and communication;
- v) Assignment related surveys, training programmes;
- vi) Translation, report printing;
- vii) Contingencies: miscellaneous, insurance, shipping; and
- viii) Indirect local taxes and duties in connection with carrying out the services.

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

4.3 Finalizing and Approval of the ToR

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

4.4 Developing a Procurement Plan

The Consultancy may be part of a larger project/ works in which there be other components of work, Goods or services. Once a project or a program is identified, the Procuring Entity needs to develop synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different components including consultancy, adoption of the most appropriate method of selection and type of contract, and ensuring that consultant selection is initiated and completed to meet the overall requirements of project implementation. For example, if a consultant is required for a large road project construction supervision, the entire sequence of preparation of the feasibility report, detailed design and bidding document, time required for inviting bids for construction work, and award of contract has to be taken into account so that the construction supervision consultant is mobilised before the award of the construction contract.

4.5 e-Procurement

4.5.1 Electronic procurement (e-procurement) is the use of information and communication technology (specially the internet) by the buyer in conducting procurement processes with the vendors/ contractors for the acquisition of goods

(supplies), works and services aimed at open, non-discriminatory and efficient procurement through transparent procedures. It is now mandatory for Ministries/ Departments to receive all bids through e procurement portals in respect of all procurements. A generic description of how e-Procurement is conducted is given in Appendix 3.

4.5.2 Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provider so far may use e-procurement solution developed by NIC. Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.

4.5.3 These instructions will not apply to procurements made by Ministries/ Departments through Government e-Marketplace (GeM).

4.5.4 In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.

4.5.5 In case of tenders floated by Indian Missions abroad, Competent Authority to decide the tender, may exempt such case from e-procurement.

(Rule 160 of GFR 2017)