Chapter 5: Evaluation of Bids and Award of Work

5.1 Evaluation of Bids

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

5.2 Schedule of Procurement Powers (SoPP)

5.2.1 There are delegations up to a low threshold value below which the evaluation of the bids and decision for award of contract may be entrusted directly (instead on a recommendation of a Tender Committee) to individual competent authority. He would himself carry out all the steps in evaluation described below, instead of the TC and directly record reasons and decision on the file itself. He may ask for a Technical Suitability report from User Departments, if so needed. In procurements above such a threshold, evaluation is carried out by Tender Committee consisting of three or more members with requisite experience and competence. Members include a Financial Adviser or his representative and a representative of the user as per SoPP. Procuring Entity should lay down a SoPP specifying such thresholds. Experts may also be called in to assist the TC. TC should not be very large as it may slow down the evaluation

process. There is no need to constitute any other committee for technical evaluation, preliminary evaluation etc. The representative of user Department will work as a convener of the TC. No member of the tender committee should be reporting directly to any other member of such committee in case estimated value of the procurement exceeds Rs. 25 lakh[42]. Though the GFR stipulates this provision only when the estimated value of the procurement exceeds Rs. 25 lakh, it is desirable that the same provision should be followed in the constitution of all purchase committees irrespective of the value of procurement. Every Procuring Entity is expected to clearly lay down the powers, jurisdiction and composition of different levels of Tender Committee and corresponding Accepting Authority for different categories of procurement and different threshold values of procurements. Such an arrangement ensures checks & balances in the Tender Evaluation Process. Competent authority, in direct acceptance case; and member secretary of the Tender Committee will receive the bids opened along with other documents from the tender opening officials and are responsible for safe-custody of the documents and for processing involved at all steps in finalising the Procurement. A model SoPP is attached in Appendix-4 for guidance.

5.3 Preparation of Comparative Statement and Briefing Note

5.3.1 Except in cases of LTE, the Procuring Entity should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of Techno-Commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of Technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the associated/ integrated Finance for veracity of information. It is also a good practice, to prepare a briefing note by the member secretary of TC for guidance of other TC members, before first TC meeting is held. In some organisations, the briefing note is also vetted by Finance. TC cannot have tender accepting authority as a TC member.

5.4 Preliminary Examination

5.4.1 Confidentiality of Process

[42] Rule 173 (xxii), GFR 2017

i) Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other person not officially concerned with such a process until the award to the successful bidder has been announced.

ii) From the time of bid opening to the time of contract award, no bidder shall contact the Procuring Entity on any matter related to the bid, except on request and prior written permission.

iii) Any effort by the bidder to influence the Procuring Entity in bid evaluation, bid comparison or contract award decisions will vitiate the process and will result in the rejection of the bidder's bid. Such conditions, incurring in (i) & (ii) above shall be embedded in the Instructions to Bidders (ITB).

5.4.2 **Unresponsive Tenders**

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive (both during Techno-commercial evaluation and Financial Evaluation in case of Two Envelope bidding) and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Unresponsive offers may not subsequently be made responsive by correction or withdrawal of the non- conforming stipulation. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;

ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;

iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a enlisted contractor but the tenderer is not a enlisted contractor);

iv) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or

v) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the Procuring Entity's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

5.4.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender

Discrepancies can be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents, Bid Security and statutory certificates if any) should be asked for in e-Procurement

5.4.4 Minor Infirmity/ Irregularity/ Non-conformity

During the preliminary examination, some minor infirmity and/ or irregularity and/ or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 5.5.1 (iv) below) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/ speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

5.4.5 Clarification of Bids/ Shortfall Documents

During evaluation and comparison of bids, the Procuring Entity may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/ speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid including specifications, shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, GSTN number has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a contract without its completion/ performance certificate, the certificate can be asked for and considered. However, no new contract should be asked for so as to qualify the bidder.

5.5 Evaluation of Responsive Bids

In case of single stage single envelope bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In single stage multiple envelopes, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder (the lowest evaluated, substantially responsive, technically-suitable bid from eligible and qualified bidder) among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In two stage bids, the PQB/ EOI stage would have already been evaluated as detailed in Chapter 3 and this second stage is for evaluation of responses to the Second Stage multiple envelopes from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below.

5.5.1 Evaluation of Techno-commercial Bid

In evaluation of the techno-commercial bid, conformity of the eligibility/ qualification, technical and commercial conditions to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelope, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

i) **Evaluation of eligibility/ qualification Criteria:** Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/ qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/ his tender as well as such other allied information as deemed appropriate by Procuring Entity.

ii) **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/ reject or modify the evaluation contained in such a report/ evaluation. The tender document should clearly state whether alternative offers/ makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/ deviations may be waived provided they do not

constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/ deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

iii) **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/ SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/ allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

iv) **Considering Minor Deviations: Bids which are not materially deviated, may be considered substantially responsive.** Court has consistently taken a view that procuring entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:

   i) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;

   ii) Limits, in any substantial way, inconsistent with the tendering documents, the procuring entity's rights or the tenderer's obligations under the contract; or

   iii) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.

v) **Declaration of Technically Compliant Bidders:** If it is a multiple envelope tender, then the TC prepares a recommendation of techno-commercial bid (Annexure 3) to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-procurement. In single envelope/ cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

5.5.2 Right of Bidder to question rejection at Techno-commercial Stage

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/ or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 5.7.3 below.

5.5.3 Evaluation of Financial Bids and Ranking of Tenders

i) **Unresponsive Tenders:** Unresponsive tenders may again be identified after Financial Bid opening, as in case of Technical Bid opening. If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive.

ii) **Non-conformities between Figures and Words:** Sometimes, non-conformities/ errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care by defining the treatment of bids in the tender documents in the manner indicated below:

   i) If, in the price structure quoted for the requirements, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity, or the total price is not worked out by bidder), the unit price shall prevail and the total price corrected accordingly;

   ii) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and

   iii) If there is a discrepancy between words and figures, the amount in words shall prevail.

   iv) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

iii) **Correction of Bids:** Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to

reflect any discounts or other modifications offered. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In cases other than e-Procurement, the quoted rates in the bids shall be protected with lamination by the committee, if not done by the bidders. In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited. The arithmetical corrections will be done by the representatives of the Finance Division and the concerned (technical) division in the committee.

iv) **Financial Evaluation:** All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder - the lowest evaluated, substantially responsive, bid which meets the eligibility/ qualification criteria and techno-commercial aspects.

5.6 Deliberations by the Tender Committee

5.6.1 Timely Processing of Tenders

i) Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. Currently, the Ministries/Departments are generally awarding the contracts in 90 days from the date of tender opening for which the Ministries/Departments are asking for a validity of offer by the contractors for 90 days. In order to further shorten the period for award of contract, the Ministries/Departments should try to shorten the procurement decision period to 60 days from the date of opening of the

tenders in most of the cases. Only in exceptional cases, like two packet/ two stage bidding the period may be extended. *However, in no case this time period should exceed 75 days.* The Ministries/ Departments may draw guidance from the arrangements made by CPWD, where the validity of tenders has been fixed in the following manner:-

Example 2: Maximum days for award of contract by CPWD

Procuring Officer	**Limit of procurement (in Rs. crore)**	**Maximum days for decision for award of contract**
Assistant Engineer	0.06	10 days
Executive Engineer	1.00	15 days
Superintending Engineer	10.00	30 days
Chief Engineer	30.00	45 days
Additional Director General and above	More than 30.00	60 days

Complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting (Appendix 4 and 5). As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded.

ii) It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Committee (TC), wherever in place, are not meeting frequently. In order to ensure that most of the tenders are decided as per the new timelines as indicated in para above, (to be formally fixed individually by the concerned Ministries/Departments), it has been decided that the Ministries/Departments may notify at least one day of every week for the meeting of TC. Instructions may be issued by concerned organisation that on such pre-fixed days, no member of the TC shall normally take leave or proceed on tour etc.

iii) After the decision has been taken by the competent authority (TC or individual procuring officer) on the tender, such decision and the minutes of the TC (wherever applicable), except the portion that may divulge third party technical/ commercial confidential information, should be uploaded on the Central Public Procurement portal (CPPP) within three working days for greater transparency. These details shall also be uploaded on e-procurement portal or the website of the concerned Ministry/ Department/ CPSU within three working days.

5.6.2 Extension of Tender Validity Period

The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not lead to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

Reasons for seeking extension of bid validity should be recorded by the procuring officers.

5.6.3 Reasonableness of Prices

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. The comparison maybe made with the similar contracts awarded elsewhere. The Last Purchase Price (LPP) maybe updated taking into consideration inflation during the interim period and geographical conditions etc.

5.6.4 Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope, schedule, resource mobilization, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, procuring entity determines that the Bidder has *substantially failed* to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the Bid/ Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would automatically be considered as an abnormally low bid.

As a safeguard, it should be closely monitored that final payments in such cases do not abnormally increases due to extra items. Further, there is no abnormal increase in quantities of the item for which contractors have initially quoted very high rates.

5.6.5 Cartel Formation/ Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/ cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/ control true competition in a tender leading to "appreciable adverse effect on competition" have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves enlisted for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/ slicing of the work may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

5.6.6 Negotiations

i) Normally, there should be no negotiation. Negotiations should be a rare exception rather than the rule and may be resorted to only in exceptional circumstances. If it is decided to hold negotiations for reduction of prices, they should be held only with the lowest acceptable bidder (L1), who is techno-commercially responsive for the supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/ pool rates are suspected, should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:

a) Where the procurement is done on nomination basis;

b) Procurement is from single or limited sources;

c) Procurements where there is suspicion of cartel formation which should be recorded; and

d) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.

iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates

accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.

iv) After the CA or TC has decided to call a specific bidder for negotiation, the following procedure should be adopted:

a) Negotiations must be carried out by the CA or TC only;

b) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;

c) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 4, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;

d) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor as per Annexure 4; and

e) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 5. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

5.6.7 Consideration of Lack of Competition

Sometimes, against advertised/ limited tender cases, the procuring entity may not receive a sufficient number of bids and/ or after analysing the bids, ends up with only one responsive bid – a situation referred to as 'Single Offer'. As per Rule 21 of DFPR (explanation sub-para), such situation of 'Single Offer' is to be treated as Single Tender. The contract may be placed on the 'Single Offer' bidder provided the quoted price is reasonable. However restricted powers of Single tender mode of procurement would apply. Before retendering, the procuring entity is first to check whether, while

floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender as a safe course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process may be considered valid provided following conditions are satisfied:

i) The procurement was satisfactorily advertised and sufficient time was given for submission of bids;

ii) The qualification criteria were not unduly restrictive; and

iii) Prices are reasonable in comparison to market values

However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable. Unsolicited offers against LTEs should be ignored, however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering.

5.6.8 **Rejection of All Bids/ Re-tender**

i) The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:

a. If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
b. when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
c. none of the technical Proposals meets the minimum technical qualifying score;
d. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
e. the Bids'/ Proposals' prices arfe substantially higher than the updated cost estimate or available budget;
f. In case, the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case.

ii) Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The Procuring Entity should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the procuring entity is first to analyse the reasons leading to retender and check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies.

5.6.9 Handling Dissent among Tender Committee

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, but

they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.

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

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

5.6.10 **Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids**

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest in the form of any liaison or relationship with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. All TC members should sign a declaration at the end of their reports/ noting stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports. GFR 2017 [Rule 173 (xxii)] mandates that In case a Tender Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee, to ensure independent expression of views.

5.6.11 Tender Committee Recommendations/ Report

The TC has to make formal recommendations (Annexure 3) for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/ variation quoted by the contractor in his bid are not left un-deliberated and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the contractor. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the CA to consult the FA of the Department before accepting the TC recommendations. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;

ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;

iii) The price of the offer is reasonable and consistent with the quality required; and

iv) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

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

5.7 Award of Work

5.7.1 LOA to Successful Bidder

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and foolproof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is

submitted to Postal authorities (please refer to Para 2.8 of Appendix 2). A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure 6. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period [generally 14 (fourteen) days].

In respect of contracts upto Rupees ten lakh, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.

In respect of contracts with estimated value more than Rupees ten lakh, a contract document should be executed, with all necessary clauses to make it a self contained contract. If, however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications a simple one page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, offer of the tenderer and letter of acceptance.

Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

5.7.2 **Publication of Tender Results and Return of EMD of Unsuccessful Bidders**

GFR 2017 (Rule 159) makes it mandatory to publish details of Bid award on the CPPP and also in the notice board/ bulletin/ website of the concerned ministry or department/ e-Procurement Portal. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Secretary of the Department with the concurrence of the concerned Financial Advisor. In the case of Autonomous Bodies and Statutory Bodies' approval of the Head of the Body with the concurrence of the Head of the Finance should be obtained in each such case. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a quarterly basis to the Ministry of Finance, Department of Expenditure. Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 (thirty) days of

notice of award of contract. The successful contractor's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

In cases, where PSUs compete with private firms in public tenders, publication of details of contracts awarded by the PSU concerned to various sub-vendors, suppliers, technology providers and other associates before firming up their offer, may hurt the interest of the PSU as the competitors may get to know the details of sub-venders, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

5.7.3 Bidder's right to question rejection

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/ or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. The procuring entity should ensure a decision within 15 (fifteen) days of the receipt of the representation. Only a directly affected bidder can represent in this regard:

i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder enlistment or bidding, as the case may be, can make such representation

ii) In case pre-qualification bid has been evaluated before the bidding of technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder has qualified in pre-qualification bid;

iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable

Following decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review:

a) Determination of the need for procurement;

b) Selection of the mode of procurement or bidding system;

c) Choice of selection procedure;

d) Provisions limiting participation of bidders in the procurement process;

e) The decision to enter into negotiations with the L1 bidder;

f) Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements;

g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/ contractor; and

h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

5.7.4 **Performance Security**

The contractor receiving the LOA is required to furnish the required performance security, if it is part of tender conditions, in the prescribed form by the specified date; failing this necessary action including forfeiture of EMD will be taken against the contractor.

5.7.5 **Acknowledgement of Contract by Successful Bidder and Execution**

After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties. The contractor should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (fourteen) days from the date of issue of the contract in case of OTE and 21 (twenty-one) days in case of GTE. Such acknowledgements may not be required in low value contracts, below Rs one lakh or when the bidders offer has been accepted in entirety, without any modifications. If both parties (Procuring Entity and the contractor) simultaneously sign the contract across the table, further acknowledgement from the contractor is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so by or under the orders of the President of India in terms of Article 299 (1) of the Constitution of India.

The words “for and on behalf of the President of India” should follow the designation appended below the signature of the officer authorised on this behalf. The various classes of contracts and assurances of property, which may be executed by different authorities, are specified in the DFPR. No contract on behalf of an organisation of Procuring Entity should be entered into by any authority which has not been empowered to do so under the orders of the state government.

5.7.6 **Framing of Contract**

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

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

ii) All contracts shall contain a provision for

   a) Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;

   b) A warranty clause/ defect liability clause should be incorporated in contracts for plant and machinery and works, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/ works/ services;

   c) All contracts for supply of goods should reserve the right of the government to reject goods which do not conform to the specifications;

   d) Payment of all applicable taxes by the contractor; and

   e) When a contract is likely to endure for a period of more than two years, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the government at any time on the expiry of six months’ notice to that effect.

   f) How the appointed day or day of starting of the work shall be determined.

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

a) [43]A Ministry or Department may, at its discretion, make purchases of value up to Rupees two lakh and fifty thousand by issuing purchase orders containing basic terms and conditions

b) In cases where standard forms of contracts are not used or where modifications in standard forms are considered necessary in respect of individual contracts, legal and financial advice should be taken in drafting the clauses in the contract and approval of CAs is to be obtained; and

c) Copies of all contracts and agreements for purchases of the value of Rs. 25 (twenty-five) lakh and above, and of all rate and running contracts entered into by civil departments of the government should be sent to the Accountant General.

5.7.7 **Procurement Records**

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

[43]Rule 255 (iv) (a), GFR 2017

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

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

Chapter 6: Execution and Monitoring of Works and Quality Assurance

6.1 Execution and Monitoring of Work

No work shall be commenced unless the conditions precedent as laid down in Para 1.10 (xi) have been fulfilled.

6.1.1 A competent Project Management Team shall be set up including training on Project Management to the team, if required.

6.1.2 **Monitoring System:** A system of project monitoring for each work shall be prepared before start of the work and same shall be available at site of work. 'Deadlines' or 'contractual milestones' should be set up and tabulated to facilitate monitoring of the progress of work. The work shall be monitored quarterly/ monthly basis by the Works Committee and a status report should be submitted to the Secretary in charge of the concerned Ministry/ Department.

All complex assignments require the use of proper project management tools that enable the contract management team (procuring entity, engineer, project manager, etc.) to collaboratively monitor the actual; physical and financial progress of the contract against the planned physical and financial schedule. The contract may also specify that the contractor engage certified project management professionals to train and monitor project progress (e.g.: PMI certified engineers). There are many project management tools and software programmes that are extremely useful for the contract management team. Some of the common software programmes are (no endorsements are intended, there are many more such software available): Microsoft Project and Portfolio Management (MS PPM) and Oracle Primavera P6 Professional Project Management (P6 PPM).

6.1.3 **Fulfilling the Conditions Precedent to Land Acquisition and Other Clearances and Permits:** The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, by the time the contract is awarded. The Procuring Entity shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj

Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, Stale/ Central Environmental Authorities, Forrest and Wild-life authorities etc(for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the project; rehabilitation and resettlement of persons affected by the project; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wild-life clearances; and shifting of religious shrines etc), so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. The Procuring Entity has to be aware that any delay in fulfilling the conditions precedent stipulated in the contract will attract delay claims form the contractor, besides causing time and cost overruns. Hence, all or most conditions precedent shall be fulfilled before award of the LoA. The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals.

6.1.4 **Commencement of Work:** After signing the contract and issue of LoA, the engineer should instruct the contractor to 'commence the works', only after all the above mentioned land availability, clearances and permits have been obtained. The contractor, within the stipulated time, should submit to the engineer for his consent: (i) the work programme in such form and detail as the engineer reasonably prescribes; (ii) methods statement which the contractor proposes to adopt for execution of the works; and (iii) the quality assurance plan. The Procuring Entity should on being satisfied with Contractor's submission provide to the contractor total or partial possession of the site.

6.1.5 **Approval of Quarries and Borrow Areas and Materials:** The contractor will obtain approval of the engineer for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/ or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the engineer to comply with the requirements of specifications.

6.1.6 **Sub-contracting:** The works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting

will generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting. The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

6.1.7 **Safety at Work Site**: The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site. He must follow the laws, codes and standards laid down in this regard. The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs. Special precautions must be used if hazardous chemicals are used or stored at workplace (lead, silica, asbestos and wood/stone that will be cut and generate dust, construction materials containing zinc, cadmium, beryllium and mercury).Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, flooding, falling objects, bridge-span dropping/ failures, crane falling/ overturning and damage to building from vibrations/ cave-ins from construction activities. Engineer must ensure that contractor does not adopt any short-cut in this regard. Most large contracts have a well defined Safety Health & Environment (SHE) guidelines embedded in the agreement. Appointment of site safety engineer by the contractor is a mandatory requirement in such cases. The engineer shall engage safety experts to carry out frequent SHE audits and mandate correct measures.

6.1.8 **Progress Reporting & Review:** There should be a stipulation in the contract for large value works (magnitude to be specified), for the contractor to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:

i) Project information, giving the broad features of the contract.

ii) Introduction, giving a brief scope of the work under the contract and the broad structural or other details.

iii) Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.

iv) Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.

v) Plant and machinery statement, indicating those deployed in the work, and their working status.

vi) Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.

vii) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.

viii) A statement showing the extra and substituted items submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken by the contractor, if any, the advances received and adjusted from the department, etc.

ix) Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.

x) Quality assurance and quality control tests conducted during the month, with the results thereof.

xi) Any hold-up shall be specified.

xii) Dispute, if any, shall also be highlighted.

xiii) Monthly or fortnightly progress review by engineer and Procuring Entity with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

6.2 Quality Assurance

6.2.1 In order to control the quality of work, a Quality Assurance Cell shall be formed in every work centre comprising of multi- disciplinary professionals/ engineers to cover all types of works, such as civil, mechanical, electrical etc.

6.2.2 In case of non-availability of qualified professionals/ engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

6.3 Design Approvals

In case of EPC contracts approval of the designs should be taken from the appropriate authority, as defined in the tender document, to ensure that the performance level are met by the design.

6.4 Time Monitoring

6.4.1 Time At Large

When the Procuring Entity does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits his right to such remedies. Under such circumstances Time is said to become at large and the contractor gets freed from his obligation to complete within the specified time. To avoid such a situation, before the expiry of originally stipulated date of completion, the Procuring Entity should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.

6.4.2 Force Majeure (FM) Clause

Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM). Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence. Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to

exist. However if such event continue for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

6.4.3 Delays in Execution

i) A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the procuring entity or the tenderer and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the procuring entity or the engineer, or other causes. Such delays expose the non-performing party to various sanctions under the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorise the delays as follows:

   a) **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, and so on, applies;

   b) **Compensable delays –** or Compensation Events, which put full burden of responsibility on the Procuring Entity as covered in the GCC; and

   c) **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.

   d) **Concurrent delays -** when two or more events responsible for delay overlap each other. The delays may be attributable to the Procuring Entity or the contractor or none, and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The Procuring Entity should see that the concurrent delays do not result in unnecessary extra extension of time.

ii) Once the delay is categorised, it should then be determined not only whether the contractor is eligible for time extension and/ or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.

6.4.4 Liquidated Damages and Incentives/ Bonus

Normally, tenders shall be invited with reference to a pre-determined period of completion of works. Provision of incentives for completion of work before schedule should be sparingly made after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms.

Incentives/ Bonus (e.g. one percent of the contract value per month subject to a maximum of five percent of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously. To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Engineer (Engineer herein refers to PWO/ PSU/ Organisation to which work has been entrusted under Rule 133 of GFR 2017). The Engineer shall report the actual date of completion of the works as soon as possible through fax or email so that the report is received within seven days of such completion by the concerned CA.

In case of delay in completion of the contract, liquidated damages (for repair works costing up to Rs. Ten lakh - one percent of the contract value per week and for all other works half percent of the contract value per week of delay subject to a maximum of ten percent of contract value) should be levied. The penalties proposed for identified lapses of omission or commission must be disclosed in the tender documents in clear monetary terms.

6.4.5 **Extension of Time (EOT)**

i) Extension of Time (EOT) must not be left to the end; it should be dealt with promptly during the progress of the contract and for ongoing critical delay interim EOT may be awarded. The engineer shall, after due consultation with the procuring entity and the contractor, determine the length of such extension and notify the contractor accordingly, with a copy to the procuring entity. After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.

ii) If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC. The Engineer will assess whether and by how much the intended completion date shall be extended.

iii) Organsations may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

6.5 Financial Monitoring

Besides administering the contract with regard to its quality and completion, the engineer will regularly assess the financial position and exercise financial control. He will update, on a quarterly basis, cash flow projections, cost estimates and yearly/ quarterly milestones, and submit them to the Procuring Entity. Variations should take place with a view to achieving economical completion of the work, and not to result in avoidable higher rates or costs. In case of a significant number of variation orders or unexpectedly rapid cost escalation, updation may be done more frequently. The financial statements should bring out comparisons of the initial estimated/ tendered cost with the actual cost -- component- and activity --wise -- both with respect of quantities and value. The Procuring Entity should examine these statements critically. If costs are likely to be exceeded, this should be anticipated, and a revised estimate of cost prepared, with complete explanations, for approval by the CA.

6.5.1 Variations/ Extra/ Substituted Items

i) **Variation means:** (a) increase or decrease in the quantity of any work included in the BOQ of the contract; (b) omission of any such work (but not if the omitted work is to be carried out by the procuring entity by another contractor); (c) change in the character or quality or kind of any such work; (d) change in the levels, lines, position and dimensions of any part of the works; (e) additional work of any kind necessary for the completion of the works; and (f) change of the specified sequence or timing of construction of any part of the works. The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/ character and purpose of the original contract. The variation may result in additional or reduced payments to the contractor or there may be no price change at all. It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimise any adverse effect on the overall works. Before a variation can be instructed by the Engineer to the contractor, prior approval from the

Procuring Entity is needed, except for certain situations as may be specified in SCC. The rate/ price/ valuation do not have to be agreed with the contractor, although this is preferable. Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval. In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and engineer and reported to the Procuring Entity for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.

ii) **Keeping Track of Variations/ Extra/ Substituted Items:** The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor has a tendency to report and claim positive variations (variations causing higher payments) and may not report negative variations. However, the engineer and Procuring Entity must keep track of such negative variations and issue timely letters. This shall cover the following important steps:

a) The Procuring Entity's prior approval of the issue of the variation instruction;

b) The engineer's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/ administered in a separate register;

c) The variation instruction letter must be given a unique variation number and details entered into the variation register;

d) The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and

e) The financial implications are kept up to date.

iii) **Valuation of Variations:** While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g. project

delays, cost escalations, loss of transparency etc. Variation instructions for modified, new or additional work involving extra cost shall be valued as per the procedure set out in the relevant clauses of the contract. The following are the steps to be taken by the Engineer:

a) To form an opinion as to the applicability of the rates in BOQ and if considered applicable, to use BOQ rates;

b) If not considered applicable, to use BOQ rates as the basis for valuation;

c) In the event of a disagreement, to consult with procuring entity and contractor to try and agree on suitable rates; this means developing new rates from first principles;

d) If there is disagreement, to fix the appropriate rate; and

e) To determine provisional rates to allow monthly certification.

In making his recommendations, the engineer should give the contractor the opportunity to state his case and, if he considers the BOQ rate to be inappropriate, to present his proposals as to how the rate should be adjusted or what basis should be used to assess a new price. For his part, the contractor must support his submission with full particulars including, where applicable, a detailed cost breakdown of any rate in BOQ. The Procuring Entity must also be consulted with. The Procuring Entity should ensure that the above procedure has been duly followed and appropriately explained by the engineer in his recommendations, before he approves the variation. Where it is reasonable to value at the BOQ rate or some modification of it, any stance by the contractor that the tendered price may be 'wrong' or deliberately set low is irrelevant. The threshold level of the value/ quantity of a varied item below which a variation will not merit re-fixation of rate or price should be specified in the SBD.

In case the engineer, while doing valuation of variations, notices significant cost and time over-runs due to deviations between actual ground situation and the situation recorded in DPR, he must bring to Procuring Entity's notice the reach-wise differences and the Ministry/ Department may consider stringent action against the consultant who has prepared such DPRs as per para 2.4.2.

6.5.2 **Measurement and Payment**

i) Measurements of all items having financial value shall be recorded in Measurement books (MB) and/ or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. Electronic Management Books (e-MBs) : Organisations as early as possible implement e- MBs and same should be integrated with IT based project monitoring system.

ii) Interim Payments: At a prearranged date each month, the contractor will submit a statement in such a form as the engineer from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The engineer's would issue an Interim Payment Certificate (IPC) after following checks:

a) Quantity of work actually completed as of an agreed 'cut-off' date;
b) Reconciliation with Field measurements of quantities of work completed or claimed;
c) Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
d) Review of claims for extra work;
e) Checking of retention amount and other recoveries;
f) Review of variations - whether these have been approved by Procuring Entity. If not, provisional rates are to be used until final valuation sanctioned by Procuring Entity; and
g) Price adjustments;
h) Following the bills filed by the contractor, Interim monthly payments (net of: (i) retentions and recovery of advances; and (ii) statutory deductions (works tax, income tax, others) would be made based on IPC. The engineer will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of IPC, if any, specified in the contract.

iii) As cash flow is a critical requirement in a project, payments delays impact the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carry cost. Expenditure Management Committee constituted by Government of India (headed by Dr. Bimal Jalan,

eminent economist and public policy experts) in its report has endorsed (recommendation no. 76[44]) the practice of releasing a specified proportion (say Seventy-five percent - 75%) of the running milestone payments, within a week of the bill being submitted, pending a detailed check on the claim, in large projects. The balance is to be released after the claims are scrutinised in detail as per procedure. If required an enabling provision may be incorporated in the Conditions of Contract, possibly with stringent penalties in case of misuse of this provision. In this regards the committee had reported that Delhi Metro Rail Corporation (DMRC) has instituted such a system and it is stated to have helped in getting both a speedier execution and more competitive bids.

iv) [45]Final bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of final certificate of completion furnished by the Department/ Ministry. Payment shall then be made after verification of the bill on the personal certificate of the officer-in-charge of execution of the work in the format given below:

"I ….. Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry."

v) **Delay in payment to the contractors**

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

[44]DoE OM No. 16/1/2016-PPD dated 24th August, 2016
[45] Rule 139(vii), GFR, 2017

possible, and after payment a written explanation for the delay shall be submitted to the next higher authority within three working days.

b) Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 30 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the rate of interest of General Provident Fund.

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

d) The final bill should also be paid to the contractor within three months after completion of work.

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

Note: In para 6.5.2 (v) instructions containing "shall" are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

6.5.3 **Mobilisation Advance**

i) If considered justified in certain specialized and capital intensive works, Contract may provide for an interest-bearing mobilisation advance to be paid to the contractor exclusively for the costs of mobilisation at 10 (ten) per cent of the contract price on the provision by the contractor of an unconditional BG. Such BGs shall remain effective until the advance payment has been fully repaid, but

the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.

ii) The aforesaid advance of 10 (ten) per cent may be paid in two instalments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG in respect of the advance. The second instalment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10 (ten) per cent of the contract price, as also provision of a BG by the contractor for this part of the advance. Mobilisation expenditure mentioned herein shall not include the margin money and bank commission, and so on, paid by the contractor for procurement of BGs against performance security and mobilisation advance.

iii) Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Organisation to take decision for grant of the mobilisation advance, whether interest free or interest bearing.

iv) Though the Commission does not encourage interest free mobilization advance, but, if the Management feels it necessity in specific cases then it should be clearly stipulated in the tender document and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.

v) Part 'Bank Guarantees' (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery instalments and should be equivalent to the amount of each instalment. This would ensure that at any point of time even if the contractor's money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.

vi) There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.

vii) The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.

viii) Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.

ix) In case of 'Machinery and Equipment advance', insurance and hypothecation to the employer should be ensured.

x) Utilization certificate from the contractor for the mob advance should be obtained. Preferably, mob adv should be given in instalments and subsequent instalments should be released after getting satisfactory utilization certificate from the contractor for the earlier instalment.

6.5.4 Plant, Machinery and shuttering Material Advance

Another interest-bearing advance of five per cent of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so provided in the Bid Documents and so requested by the contractor. The advance should normally not be more than 50 (fifty) percent of the depreciated cost of such plants and machinery should be hypothecated to the Govt., before the payment of advance is released. This advance shall be subject to the following conditions: (i) the contractor shall produce satisfactory proof of payment; (ii) such equipment is considered necessary by the engineer for the works; (iii) the equipment has been verified to have been brought to site; (iv) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and (v) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.

The rate of interest shall be stipulated in the bid documents (say 10 (ten) per cent per annum) or as may be notified by the Procuring Agency from time to time.

The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/ interim payment). The time of commencement

of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.

All advances shall be used by the contractor exclusively for mobilisation expenditure, including the acquisition of construction-related plant and equipment. Should the contractor misappropriate any portion of the advance, it shall become due and payable immediately, and no further advance will be made to the contractor thereafter. In such cases, the contractor shall also be liable for appropriate action under the contract.

6.5.5 Secured Advance against Material brought to Site

Secured advance on the security of materials (which are not combustible, fragile or perishable in nature) brought to the site but not yet incorporated in the works will be made up to 75 (seventy-five) per cent of invoice value, or the 75 (seventy-five) per cent of the corresponding value of the materials determined on the basis of BOQ rates, whichever is less, subject to the condition that their quantities are not excessive and shall be used within a period of 90 (ninety) days and subject to other stipulations in the contract. The contractor will be required to sign an indenture bond, hypothecating the goods to the procuring entity, and also be responsible for their safe custody. Before the advance is released, the procuring entity may inspect the site to ensure that the Contractor has safeguarded the materials against pilferage and deterioration. It may be ensured that the contractor has not taken any loan/ limit from banks against hypothecation of the materials against which the secured advance is claimed. An undertaking in this regard may also be taken from the contractor.

Generally, as per the provisions of the contracts, the contractors are required to submit proof of cost of materials and the delivery of material at site while claiming such advances. The stock register should be maintained from the commencement of the contract and, unless otherwise prescribed in the contracts, the stock, so considered for advance, should generally be only paid stock (and not brought on credit). Where the materials are supplied from a captive source of the contractor, the reasonableness of the valuation of such materials may be ensured.

The advance will be repaid from each succeeding running bill (periodic/ interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works. In all cases, the repayment of the advance will be

affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.

6.5.6 **Price Variation**

This will deal with rise and fall of the prices in construction materials/ labour and other key inputs. However, this shall not be applicable in the contracts where period of completion is eighteen months or less. The provision of price variation clauses enables contractors to factor this reduced risk and quote more competitive prices.

The amount payable to the contractor shall be adjusted in respect of the rise or fall in the cost of labour, Petroleum, Oils and Lubricants (POL) and materials to the work for which appropriate formulae shall be prescribed in the contract and shall form part of the tender document.

To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingencies of such uncovered portion of rise or fall of costs.

The formulae may be based on weightages of the material/ labour/ POL and cost indices/ base prices. Indices shall be appropriate for their purpose and shall relate to the contractor's proposed source of supply of inputs on the basis of which his contract price shall have been computed.

If any statutory regulations or bye-laws come into force after submission of the bids, which cause additional or reduced cost to the contractor in the execution of the contract, such statutory additional or reduced cost (except which are covered in cost indices) shall be added or deducted from the contract price.

Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the price adjustment [or Price Variation Clause (PVC)] may be stipulated for items with inputs (raw material, man power, etc.), prone to short-term price volatility - especially for critical or high value works – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall.

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be

provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

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

The following are important elements of PVC:

a) The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year;

b) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);

c) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;

d) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;

e) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;

f) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;

g) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;

h) Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;

i) The clause should also contain the mode and terms of payment of the price variation admissible; and

j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.

k) An illustrative PVC clause is available in Annexure 14.

l) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

> *"It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."*

m) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6.6 Commissioning and Documentation

6.6.1 When the work has been executed, the assets created shall be commissioned. Reasonable advance information of completion of work should be given to the concerned Ministry/ Department to enable them to make arrangements for taking over. The Ministry/ Department may carry out detailed inspection of the commissioned project to ensure that no deficiencies are there before taking over. "As built" drawings of the work shall be got prepared through the contractor or otherwise to facilitate proper maintenance of the assets, additions to the assets at subsequent dates etc. and to form part of the records of the Ministry/ Department.

6.6.2 The Contractor/ PWO/ PSU would be responsible for obtaining Completion/ Occupancy Certificates/ Clearances and No-Objection-Certificates (NOCs), if applicable, from the local civic authorities. For completed Work and Facilities before handing over the same to 'Procuring Entity' for putting them to functional use.

6.6.3 Before the completed work is taken over by the Ministry/ Department, it must ensure that the Contractor restores to original status - the auxiliary services/ facilities (Roads, Sewerage, utilities, including removal of garbage and debris) affected during the construction process.

6.6.4. The Contractor/ PWO/ PSU shall hand over to Ministry/ Department concerned or its Authorized Representative completed Work including all Services and Facilities constructed in accordance with the Approved Plans, Specifications fulfilling all agreed techno-functional requirements along with Inventory, As built - Drawings, Maintenance Manual/ Standard Operating Procedure (SOP) for Equipments and Plants, all clearances /Certificates from Statutory Authorities, Local Bodies etc.

6.6.5. On completion of the work, a Project Completion Report (PCR) shall be submitted by The Contractor/ PWO/ PSU duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of

unspent balance amount to the Ministry/ Department within one month of settlement of final bills of the contractors/ other agencies deployed on the work.

6.6.6. Record keeping should be created at every work centre to facilitate proper stacking of records pertaining to the completed works. The records should be preserved in such a manner that the same can be retrieved whenever required.

6.7 Closure of Contract

6.7.1 Completion of Contract

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

6.7.2 Material and Works Reconciliation

The Ministry/ Department should confirm that all Works ordered in the contract and paid for have been taken over in good condition and there is no shortcoming. Full reconciliation of all materials, machinery and assets provided to the contractor should be done including wastages and return of scrap/ off-cuts.

6.7.3 Reconciliation with the User Department

Besides Works reconciliation, the user department should certify in writing that the following activities (wherever applicable) have been completed by the contractor, to the department's satisfaction, as per the contract:

i) Achievement of performance standards of Work;
ii) Installation and commissioning, if any;
iii) Support service during the Defect Liability Period which has ended on _____;
iv) As Made Drawings;

v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.

6.7.4 Payment Reconciliation

The Ministries/ Departments may reconcile payments made to the contractor to ensure that there is no liability outstanding against the contractor on account of:

i) LD;
ii) Price reduction enforced on account of shortfall in standards of Work;
iii) Variations/ deviations from the scope of the contract;
iv) Overpayments/ duplicate payments, if any;
v) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
vi) Demurrage, insurance premiums or claims, and so on;
vii) Works reconciliation;
viii) Price variations;
ix) Statutory duties paid on behalf of the contractor by Procuring Entity; and

On satisfactory reconciliation and against a “no claim certificate” from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

6.8 Dispute Resolution Mechanism

6.8.1 Normally, there should not be any scope for dispute between the Procuring Entity and contractor after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the procuring entity and contractor. When a dispute/ difference arise, both the procuring entity and contractor should first try to resolve it amicably by mutual consultation failing which Dispute Resolution process should be invoked. The dispute resolution method shall be specified clearly in the bidding document. It may be through a Disputes Resolution Board. Dispute Resolution Mechanism for PPP projects is to be specifically provided in the Concession Agreement whereby if mediation does not succeed then Arbitration under the Arbitration and Reconciliation Act is to be provided for.

6.8.2 If a dispute of any kind, whatsoever, arises between the procuring entity and contractor in connection with or arising out of the contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after the repudiation or termination of the contract, including any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or valuation of the Engineer; the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board.

6.8.3 The Works Committee may act as Dispute Resolution Board. The board may co-opt any other officer, if required for dispute resolution.

6.9 Conciliation

The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiations to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties to reach an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party.

6.10 Arbitration

If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996 as amended by Arbitration and Conciliation (Amendment) Act, 2015. For this purpose, when the contract is with a domestic contractor, a standard arbitration clause may be included in the SBD indicating the arbitration procedure to be followed. All questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be referred to adjudication through arbitration. Please refer to Appendix 3 for further details of the Arbitration Act.

It is therefore essential that the Project Organisation of the Procuring Entity and Engineer be aware of potential arbitration clauses and ensure that crucial documentation including site records, quantity records, handover of site etc. are recorded and secured properly for future use.

6.10.1 **Arbitration and dispute resolution**

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

ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.

(iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.

iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.

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

6.10.2 **Arbitration Awards**

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

Note: In para 6.10.2 (i) instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects

of the same Ministry/ Department as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the Ministry/ Department may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and the Ministry/ Department. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.][46]

6.11 Breach of Contract, Remedies and Termination

6.11.1 **Breach of Contract**

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

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

6.11.2 **Cancellation of Contract for Default**

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

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

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

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

6.11.3 **Termination of Contract for Insolvency**

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

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

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

6.12 Preparation of Revised Project Report

As per GFR, 2017, Rule 141, for project costing Rs. 100 crore or above the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crore, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates.

On the lines of provisions in Ministry of Finance (DoE)'s instructions vide OM No. 24(35)/PF-II/2012 dated 05/08/2016 regarding appraisal and approval of Public

Funded projects/ schemes, any increase in costs due to statutory levies, exchange rate variation, price escalation within the approved time cycle and/ or increase in costs upto 20 percent due to any other reason, are covered by the approval of the original cost estimates. Any increase in this regard would be approved by the Secretary of the Administrative Department concerned with the concurrence of the Financial Adviser.

Any increase in costs beyond 20 percent of the firmed-up cost estimates due to time overrun, change in scope, under-estimation, etc. (excluding increase in costs due to statutory levies, exchange rate variation and price escalation within the approved time cycle) should first be placed before a Revised Cost Committee chaired by the Financial Adviser (consisting of the Joint Secretary in-charge of the program division and representative of the Chief Adviser Cost as members) to identify the specific reasons behind such increase, identify lapses, if any, and suggest remedial measures for the same. The recommendations of the Revised Cost Committee should be placed for fresh appraisal and approval before the authority as per the extant delegation of powers (It may be noted that a firmed-up cost estimate here means a cost estimate which has been through the full appraisal and approval procedure as per the extant delegation of powers).

When the variation/ excess occurs at such an advanced period in the construction of a work[47] as to render the submission of a revised estimate purposeless, the completion report may explain the excess and an Officer of status not lower than that of Superintending Engineer (of PWO/ PSU) may pass the completion report, if the total expenditure in question is not greater than that which he is empowered to sanction in the case of a revised estimate.

[47] Rule 78, 104 & 106 of CPWD Departmental Code

Chapter 7: Registration/ Enlistment of Contractors and Governance Issues

7.1 Contractor Relationship Management

Contractor Relationship Management comprises the following functions:

i) Ensuring compliance of contractors to the Code of Integrity for Public Procurement and Integrity Pact (CIPP) if stipulated in Bid Documents;

ii) Holiday listing; removal from the list of enlisted contractors and banning/ debarment of firms; and

iii) Development of new sources and registration/ enlistment of contractors.

7.2 Code of Integrity for Public Procurement (CIPP)

7.2.1 Introduction

Public procurement is perceived to be prone to corruption and ethical risks. To mitigate this, the officials of Procuring Entities involved in procurement and the bidders/ contractors must abide by the following Code of Integrity for Public Procurement (CIPP). All Procuring officials may be asked to sign declarations to this effect periodically and in various Procurement decisions (including Preparation of Estimates). The bidders/ contractors should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement (including sub-contractors engaged by them) in enlistment applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of enlisted contractors, but it would be liable for other punitive actions such as cancellation of contracts, banning and blacklisting or action in Competition Commission of India, and so on.

7.2.2 Code of Integrity for Public Procurement[48]

Procuring authorities as well as bidders, contractors and consultants should observe the highest standard of ethics and should not indulge in the following prohibited

[48] Rule 175 (1), GFR 2017

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;

7.2.3 Obligations for Proactive Disclosures[49]

i) Procuring authorities as well as bidders, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declares any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and

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 bidder's actions in the tender and subsequent contract.

7.2.4 Punitive Provisions[50]

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 directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract,

[49] Rule 175(1) (ii & ii), GFR, 2017
[50] Rule 175(2), GFR, 2017

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 including advance payments, if any, 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 enlisted contractors 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.

7.2.5 **Conduct of Public Servants in Public Procurement - Risks and Mitigations**	
Risk	*Mitigation*
Hospitality: Hospitality (including facilitation of travel, lodging, boarding and entertainment during official or unofficial programs) from suppliers 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,	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 contractor, supplier or 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

7.2.5 **Conduct of Public Servants in Public Procurement - Risks and Mitigations**	
Risk	*Mitigation*
even if other arrangements are available at the location.	execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.
In the contracts signed with suppliers by some of the Ministries/ Departments have clauses of pre-inspection at the firm's premises, where there is a provision that the suppliers or the vendors will pay for the travel, stay, hospitality and other expenses of the Inspecting officials.	This is not in keeping with need to safeguard the independence of the inspecting teams. Such provisions in contracts need to be discouraged, so that Inspections are not compromised. Necessary steps maybe taken to strictly avoid such provisions in the contracts with suppliers/ vendors[51].
Gifts: Gifts from suppliers 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. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. 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. 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: Procuring Officials may mistakenly consider it innocuous to seek discounts in private procurements from suppliers having official dealings or its associates (especially from Rate Contract holders).	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).
Sponsorship of Events: Procuring Officials may mistakenly consider it innocuous to seek financial favours	Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors,

[51] Notified vide OM No.F.11/13/2017-PPD issued by Department of Expenditure dated 24.10.2017

7.2.5 **Conduct of Public Servants in Public Procurement - Risks and Mitigations**	
Risk	*Mitigation*
(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.	suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

7.3 Integrity Pact (IP)

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

Ministry of Finance, Department of Expenditure have mandated Ministries/ Departments and their attached/ subordinate offices (including autonomous bodies) to incorporate Integrity Pact by, depending on the nature of procurements/ contracts above a threshold value. The nature of procurement and threshold of value is to be decided by the 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.

The pact essentially envisages an agreement between the prospective contractors/ bidders and the Procuring Entity, committing the persons/ officials of both sides, not to resort to any corrupt practices in any aspect/ stage of the contract. Only those contractors/ bidders, who commit themselves to such a Pact with the Procuring Entity, 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 Sectors 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 Procuring Entity's competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway. Names and contact details of the Independent External Monitor(s) should be listed in Notice Inviting Tender (NIT).

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.

7.4 Development of New Sources and Registration/ Enlistment of Contractors

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

i) **Registration:** Simply registering the contractor, without any verification.

ii) **Enlistment:** Including the name of the contractor in the list of after verification of credentials.

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

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

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

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

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

7.4.6 **Categories for Enlistment**

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

7.4.7 Class of Enlistment (Tendering Limits)

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

(A sample classification - Source CPWD website)

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

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

i) Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;

ii) Possible sources for any category/ group of requirements can be identified based on internal and external references. Data of new contractors can be obtained from the response received from contractors, open tender advertisements, pre-qualification bids, Expression of Interest (EoI), against various enquiries on the website, dedicated websites, exhibitions, buyer-seller

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

iii) New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions. For any larger scale or critical enlistment of contractors, Procuring Entity should call for EOI by publicising its need for development of sources. The stages to be followed together with the applicable guidelines for EOI have been detailed in Chapter 3;

iv) While registering the firms, an undertaking may be obtained from them that they will abide by the CIPP enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of enlisted contractors, besides any other penalty or more severe action as deemed fit; and

v) Along with the new/ renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.

vi) **Eligibility**

i) Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;

ii) Contractors should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements

iii) Firm, against whom punitive action has been taken, shall not be eligible for re-enlistment during the currency of punitive action. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-Enlisted/ banned firms;

vii) The application form, complete in all respects and accompanied with the requisite processing fee and prescribed documents shall be submitted by the firms to the registering authority. The enlistment application form, duly filled-in,

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

viii) In cases where the firm is not considered capable and enlistment cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;

ix) Enlistment should be for specific category of works;

x) It should be mentioned in the letter of enlistment that the enlistment is valid for a period of three years and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of enlistment is not a matter of right and Procuring Entity reserves the right not to extend such enlistment without assigning any reason;

xi) All Enlisted contractors should be allocated a unique enlistment number. Once the firms are enlisted, a circular shall be issued by the enlistment authority indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted;

xii) Performance and conduct of every enlisted contractor is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of enlistment

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

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

7.5 Debarment

7.5.1 Rule 151 of GFR, 2017 deals with debarment which is as under:

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.

7.5.2 Guidelines on Debarment of firms from Bidding[52]

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

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**

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

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 7.2 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 be 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.

7.6 Project Management

7.6.A Poor management of public funded projects costs the nation in terms of the following, be it in the owner organization or in construction firms contracted to build a project:

i) Additional expenditure burden due to increased costs, crowding out more deserving schemes and projects

ii) Affect viability of projects due to increase in construction, causing losses to CPSE or agency concerned

iii) Economic burden, due to delayed return in investments

iv) Imposes unnecessary economic burden on affected stakeholders

v) Creates a culture of acceptance of delay and avoidable costs – breeding more cases

vi) Increased costs of procurement due to monetization of higher risks, perceived by contractors, of delays and scope creep associated with public funded projects.

7.6.B Given the importance of project management in the final outcomes of projects, owner organizations which plan, fund and implement projects as well as construction firms contracted to build and/or manage projects need to adopt ad institutionalize project management standards in their processes. A number of International Project Management Standards have been evolved by Governments as well as International bodies to assist organizations minimize cost and time overruns. While there are a variety of frameworks such as ISO-21500, PMBOK, PRINCE2, LOGFRAME, etc., most of them have a lot in common and have the following elements that need to be

taken into account for effective management of projects. Some of these standards may be adopted by Government to improve processes and train project staff.

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

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

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

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

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

Note: In para 7.6.G instructions containing “shall” are mandatory; any deviation from these instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

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

7.6.I It may also be useful to stipulate organizational standards and/or certifications for project managers/staff, in complex projects, as tender conditions to minimize risk of cost and time overruns:

7.6.1 Organisational Standards: ISOs 21500:2012[53]

Guidance on Project Management is an international standard developed by the International Organization for Standardization, or ISO starting in 2007 and released in 2012. It was intended to provide generic guidance, explain core principles and what constitutes good practice in project management. ISO 21500 was developed to offer guidance on the concepts and processes of project management with the goal of implementing processes and best practices to improve project management performance. While, the standard describes important concepts and processes of project management it does not provide detailed guidance and general management topics are limited to relevant aspects of project management. The standard as developed by the ISO was modelled on the PMIs PMBOK, although there are some key differences. The ISO project management standard is only 47 pages long and is limited to the introduction of the processes, their inputs, and their outputs. Another major change is the introduction of a new subject by ISO, namely, “stakeholder management”. The ISO 21500 can be used as a basis for the development of national standards. It is not intended for certification or regulatory purposes.

7.6.2 Organisational Standards: IS 15188:2009

[53] https://www.iso.org/standard/50003.html

The Indian Standard, on *Construction Project Management,* covers general guidelines for construction project management. The scope of this standard covers the stages subsequent to the stage of approval (when a decision to implement the project including its financing is taken) till commissioning and handing over of the project. The standard explains that the distinct features of a construction project include the temporary nature of the organizations involved, the evolutionary process of project deliverables during project development stages and the unique output of the built facility. This standard is intended to provide a general overview of construction project management and information regarding the applicable tools and techniques. It covers general provisions about project, stakeholder, construction project life cycle, construction project delivery models, construction methodologies/techniques and organizational structures. It covers the construction project management stages such as pre construction, construction and commissioning and handling over and gives guidelines under these stages and their sub-stages for management of construction projects. It gives brief guidelines on the following construction project management functions:

i) Scope management,
ii) Procurement management,
iii) Time management,
iv) Cost management,
v) Quality management,
vi) Risk management,
vii) Communication management,
viii) Human resources management,
ix) Health, safety and environment management,
x) Integration management, and
xi) Sustainability management.

9 out of 12 parts (except the ones in italics) of the above standard have been issued.

7.6.3 **Project Staff certification**

Project Management Institute (PMI-USA) has developed certification standards for project managers and executives in a variety of areas such as general project management, risk management, scheduling, etc. The PMI Project Management Book of Knowledge (PMBOK) describes processes, inputs, outputs and associated tools

and techniques. Both organizations use the concept of process as an integral part of project management. A large number of project firms have adopted this standard for improving competence of their manpower. ISO and PMI segregate project processes into five process groups with some minor variances in labelling. The differences between the two standards are minimal with respect to process groups and subjects/knowledge areas. The substantive difference in the two standards is with the detail and description of tools and techniques, because ISO 21500:2012 do not provide it. The 47 project management processes identified in the *PMBOK® Guide* are further grouped into ten separate Knowledge Areas. Knowledge Area represents a complete set of concepts, terms, and activities that make up a professional field, project management field, or area of specialization. These ten Knowledge Areas are used on most projects most of the time. Project teams should utilize these ten Knowledge Areas and other Knowledge Areas, as appropriate, for their specific project. The Knowledge Areas are:

i) Project Integration Management
ii) Project Scope Management
iii) Project Time Management
iv) Project Cost Management
v) Project Quality Management
vi) Project Human Resource Management
vii) Project Communications Management
viii) Project Risk Management
ix) Project Procurement Management
x) Project Stakeholder Management