

## Procurement Policy



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# PROCUREMENT POLICY

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Ver 3.0

### Version

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# Chapter – I

# Introduction

## 1.1 Overview and Purpose of Procurement Policy

*Vide* circular No. 022/VGL/032 dated 11<sup>th</sup> July, 2022, CVC has informed about updation of (i) Manual on Procurement of Goods, (ii) Manual on Procurement of Works and (iii) Manual on Procurement of Consultancy & Other Services, wherein all the CVC guidelines on public procurement have been merged. After issue of aforesaid manuals all the earlier guidelines of CVC on public procurement have been withdrawn. Accordingly, IFCI's procurement policy has been aligned in line with the above manuals keeping business requirement at the forefront.

IFCI's procurement policy sets forth guidelines to be followed during procurement, which are in line with industry best practice. These procurement guidelines would not apply to procurements by IFCI from its subsidiary companies if the procurement is for own use.

The purpose of this policy is to set out a framework within which IFCI can:

- Meet a justifiable and approved business proposal
- Maximise efficiency of procurement and distribution
- Standardise procurement processes by providing certainty to employees of their obligations
- Negotiate with suppliers in a fair, open and transparent manner and
- Ensure maximum value taking into consideration Total Cost of Ownership in the procurement of works, goods and services
- Meet Business requirement of IFCI

## 1.2 Policy Objective

The objective of Procurement policy is to safeguard the integrity of the procurement system, while ensuring that, the best optimal value for money in a time bound manner, is obtained when committing expenditure. Further, procurement policy lays out the policies and procedures with governing rules, facilitating consistent understanding of the required regulations. Every effort has been made to attune it on the lines of Manual for Procurement of Goods (June 2022), Manual for Procurement of Works (June 2022) & Manual for Procurement of Consultancy and Other Service (June 2022), if a conflict arises between the provisions now enumerated with any guidelines of Manuals, the guidelines of Manuals shall prevail except for deviations sought from the Board while formulating this policy.

Whenever IFCI receives circulars/letters/instructions from CVC /Department of Expenditure, Ministry of Finance, Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, etc. for implementation (for incorporating the necessary clauses in various procurements of the institutions) and all those Circulars in this regard shall be treated as part and parcel of this Procurement Policy.

## 1.3 Scope of Procurement Policy

The rights and obligations of IFCI and the providers of goods, works and services (i.e. Contractors/ Suppliers/ Consultants/ Agencies) for the Projects shall be governed by the bidding documents and by the contracts signed/ executed by IFCI with them. The provisions of this document shall be logically extended, to the extent applicable to all other procurements that may not have been specifically included herein since it is neither possible nor practicable to foresee all possible contingencies/ issues which may be encountered in the course of procurement, such contingencies/ issues as may be encountered would need to be dealt with using the best executive judgement with due application of mind in a transparent, fair and prudent

manner, as would be reasonable and in IFCI's overall interest, on case-to-case basis. These procurement guidelines would not apply for procurements by IFCI for its subsidiary companies subject to the Goods / Works / Services being for its own use **(but not for purpose of trading / sale)**.

#### **1.4 Standards (Canons) of Financial Proprietary**

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

Every officer incurring or authorizing expenditure from public moneys should be guided by high standards of financial propriety. Every officer should also enforce financial order and strict economy and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers.

#### **1.5 Basic Aim of Procurement – the Five R's of Procurement**

In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement:

##### **Right Quality**

Procurement aims to buy just the right quality that will suit the needs - no more and no less - with clear specification of requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. For the Right Quality, Technical Specification is the most vital ingredient. It is essential to give due consideration to Value for Money while benchmarking the specification.

##### **Right Quantity**

The right quantity should be procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities.

##### **Right Price**

It is not correct to aim at the cheapest materials/ facilities/ Services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/ services which could lead to a situation of non-performance or failure of contract). The price should take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs

##### **Right Time and Place**

The procurement should be done at the right time and place as unrealistic time schedule may lead to delays, claims and disputes.

##### **Right Source**

The source of delivery of Goods, Works and Services must have right financial capacity and technical capability (demonstrated through satisfactory past performance of contracts of same or similar nature).

## 1.6 Refined Concept of Cost and value - Value for Money (VfM)

In procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications / Terms of Reference (ToR); appropriate packaging/ slicing of requirement; selection of an appropriate mode of procurement and bidding system.

## 1.7 Need Assessment

The authority in the user Department initiating the indent for procurement shall first determine the need (including anticipated requirement) for the subject matter of the procurement. During need assessments, the following matters should comply with the 'Procurement Guidelines':

- i) **The expression/description of the need** - It should be:
  - a) Unambiguous, complete, using common terminology prevalent in relevant trade;
  - b) In accordance with the guidelines prescribed if any in this regard;
  - c) Except in case of proprietary purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where unavoidable, such item descriptions should always be followed by the words "or substantially equivalent".
- ii) **The quantity of procurement** should be adequate
- iii) **Time-schedule and place** of product/work/service delivery.
- iv) **Formulation of Specification** to ensure value for money, transparency, level playing field and ensuring widest competition.
- v) **Estimation of Cost:** The estimated cost should be worked out in a realistic and objective manner. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/ Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items for which there no historic data available. For equipment/ craft which are uniquely custom-built to buyer's specifications, the best way to get a fair assessment of costs is by obtaining budgetary quotes from potential parties (ideally, three quotes).

## 1.8 Electronic Procurement (e-Procurement)

It is mandatory to receive all bids through e-procurement portals in respect of all procurements by mode of Open Tender. As on date IFCI is using Central Public Procurement Portal (CPPP) / GeM for e-Procurement.

## 1.9 e-Publishing of Tender

It is mandatory to publish tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP). These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification / Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party. **These instructions would not apply to Purchase of goods without quotations or Purchase of goods by purchase committee. Considering the nature of business at IFCI, publishing shall be done for Open Tender Cases only. Wherever, procurement is done through**

## GeM, E-Publishing shall not be done.

### 1.10 Government e-Market Place (GeM)

Ministry of Commerce has developed an online Government e-Market (GeM) Place for common use goods and services. The procurement process on GeM is end to end from placement of supply order to payment to suppliers. This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods and Services is mandatory for Goods or Services available on GeM **subject to meeting the requisite quality, specification, and delivery period.**

The GeM portal shall be utilized for on-line purchases as under:

- i) **Up to (Rs.25,000/-)** through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be Rs.30 Lakh instead of Rs.25,000/-)
- ii) **Above Rs.25,000/- and up to Rs.5,00,000/-** through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of Rs.30 Lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM may be used by the Buyer even for procurements less than Rs.5,00,000/-.
- iii) **Above Rs.5,00,000/-** through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM (excluding Automobiles where limit of Rs.30 Lakh has been provided).
- iv) The above-mentioned monetary ceiling is applicable only for purchases made through GeM.

It may be noted that it is the responsibility of the User Department / RO to do due diligence for ensuring reasonableness of rates. At present, procurement through empanelled vendors is being done outside GeM.

### 1.11 Make in India

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017.

The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:

- a) 'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.
- b) '*Margin of purchase preference*' means the maximum extent to which the price quoted by a "Class-1 local supplier" may be above the L1 for the purpose of purchase preference. It has been fixed **as 20 (twenty) percent.**
- c) '*Nodal Ministry*' means the Ministry or Department identified pursuant to this provision in respect of a particular item of goods or services or works.

d) 'Works' means all works and will also include 'turnkey works'.

The Public Procurement (Preference to make in India), Order, 2017 was issued by DPIIT, Ministry of Commerce and Industry, on 15<sup>th</sup> June, 2017. The order has been modified several times. The policy envisages purchase preference to Class-1 Local supplier i.e. a supplier or service provider whose goods or services or works offered for procurement meets the minimum local content (at present 50%).

Procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from preference to 'Make in India'.

The Policy envisages respective Ministries to act as Nodal Ministry, as an example, for electronic items, MeitY is the nodal ministry for implementation i.e. issuance of circulars containing norms etc. Nodal Ministry shall be responsible for detailed guidelines.

### 1.12 Reservation of specific items for procurement from Micro and Small Enterprises (MSE)

IFCI shall continue to procure items reserved for procurement exclusively from MSE (**presently 358 items** including eight items of Handicrafts), which have been reserved for exclusive purchase from them, list is attached as **Appendix 1**.

### 1.13 Public Procurement Policy from Micro and Small Enterprises (MSEs)

- 1) The Procurement Policy for Micro and Small Enterprises, **2012** [amended **2018** and **2021**] has been notified by the Government in exercise of the powers conferred in Section **11** of the Micro, Small and Medium Enterprises Development (MSMED) Act, **2006**. Details of the policy along with the amendments issued in **2018** and **2021** are available on the MSME website (<http://dcmsme.gov.in/pppm.htm.aspx>).
- 2) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- 3) The Policy is applicable to all the Central Government Ministries/ Departments/ CPSUs.
  - a) To reduce transaction cost of doing business, MSEs will be facilitated by providing them tender documents free of cost, exempting MSEs from payment of earnest money deposit, adopting e-procurement to bring transparency in tendering process. However, exemption from paying Performance Bank Guarantee is not covered under the policy. MSEs may also be given relaxation in prior turnover (20% relaxation) and prior experience criteria (relaxation of up to 1 year) during the tender process, subject to meeting of quality and technical specifications [The relaxation is in line with GoI communication, MoF, DoE, OM No. 20/2/2014-PPD(Pt) dated July 25, 2016]. However, there may be circumstances (like procurement of items related to public safety, health, critical security operations and equipment, etc.) where procuring entity may prefer the vendor to have prior experience rather than giving orders to new entities.
  - b) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.

- c) In tender, participating Micro and Small Enterprises (MSE) quoting price within **price band of L1+15 (fifteen) per cent** shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty-five) per cent of total tendered value. The 25 per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSEs within such price band. If quantity is small and cannot be split/divided, entire 100% shall be given to MSE.
- d) Within this 25% quantity, a purchase preference of four (4) per cent is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs and three (3) percent is reserved for MSEs owned by women entrepreneur (if they participate in the tender process and match the L1 price). However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, four percent sub-target for procurement earmarked for MSEs owned by SC/ ST entrepreneurs and three (3) percent earmarked to women entrepreneur will be met from other MSEs. MSEs would be treated as owned by SC/ST entrepreneurs:
- i. In case of proprietary MSE, proprietor(s) shall be SC /ST;
  - ii. In case of partnership MSE, the SC/ ST partners shall be holding at least 51% (fifty-one percent) shares in the unit;
  - iii. In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ ST promoters.
- e) If subcontract is given to MSEs, it will be considered as procurement from MSEs.
- f) In case of tender item cannot be split or divided, etc. the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.
- g) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries/ Departments/ PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
- i. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
  - ii. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
  - iii. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
  - iv. A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated / implemented by the NSIC under Ministry of Finance, DoE.
- h) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
- i) **This Policy is meant for procurement of only goods produced and services rendered by MSEs.** Traders/ distributors/ sole agent/ Works Contract are excluded from



the purview of the policy.

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

In case vendors claiming benefits of MSE and Make in India, preference will be given to MSE vendors over Make in India.

#### **1.14 Financial Limit and Approving Authority**

The financial limit and authority to approve a single procurement or to enter into a procurement / outsourcing contract will be as per DoP applicable for Procurement of Goods, Works and Consultancy and other Services erstwhile Procurement department.

#### **1.15 Modification/Addition to the Policy and Procedure**

This document in the normal course shall be revisited as may be considered appropriate by the Integrated Risk Management Department.

#### **1.16 Handling Procurement in Urgencies / Emergency and Disaster**

There are sufficient fast track procurement modalities to tackle procurements in urgent/ emergent and Disaster Management situations. Use of following modes of procurements may be utilised in order of speed:

- i. Direct Procurement Without Quotation
- ii. Direct Procurement by Purchase Committee
- iii. SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids

To speed up procurement, advance cash may be drawn for direct procurement modes and made available to the Committees/ officer.

#### **1.17 Fee Based Activities**

IFCI Ltd may also engage in fee-based services related to procurement of goods or services for other organisations / entities.

## 1.18 Approval of Competent Authority

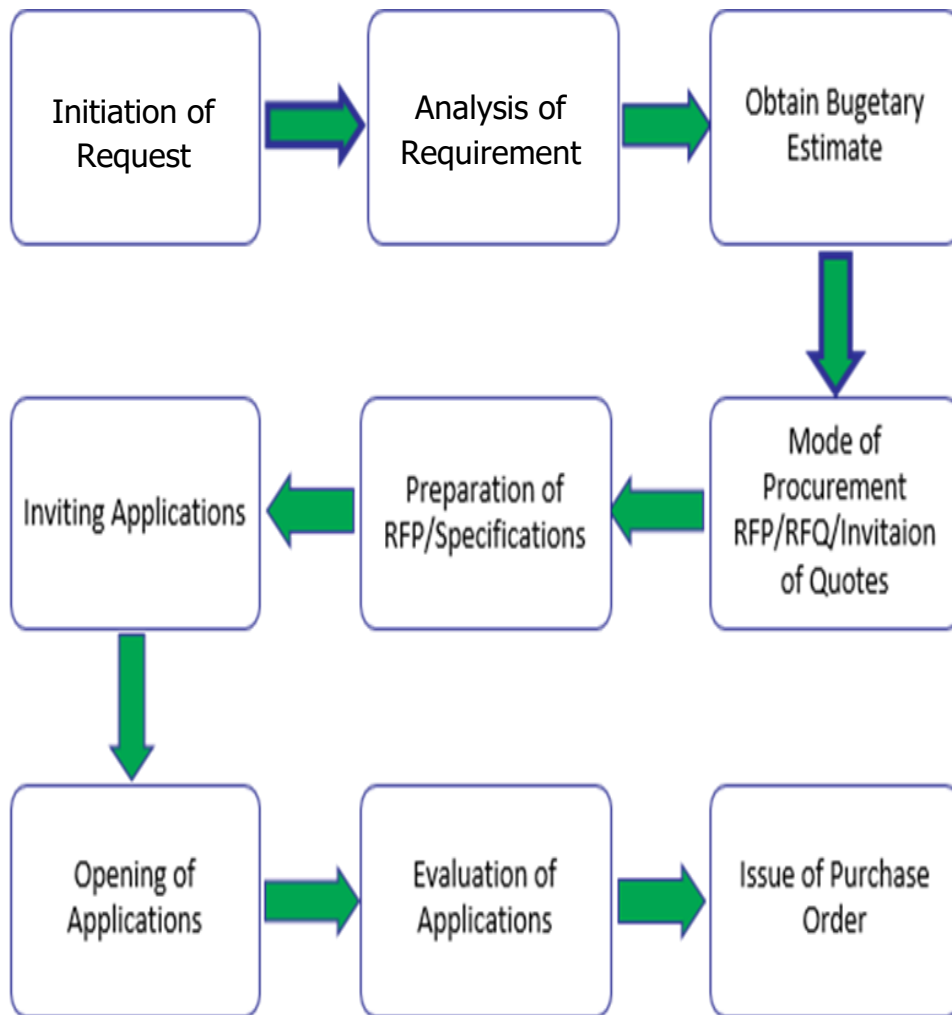
Procurement Policy is the guiding principle for carrying out procurement. However, variance from the terms of Procurement Policy can be done in case of emergency or due to any other unforeseen circumstances with the justification and approval from Competent Authority.

# Chapter - II

# Procurement Cycle

## 2.1 Procurement Cycle

Indicative Process flow of Procurement cycle is shown in graph below:



Internal recommendations / approval should be obtained from the respective authorities as per Delegation of Power (DoP) and all procurements shall be within the budgetary approval of the Board or/and any changes as per the DoP.

## 2.2 Procurement Planning

Each Department at Head office and Regional office shall at the beginning of the year submit their procurement plan in CIIS. A sample format is given hereinafter.

Procurement Plan for the financial year \_\_\_\_\_ for \_\_\_\_\_ (Name of the Department/ Regional Office)

Sl. No.	Item/Services to be procured	Tentative Value (*)	Tentative Date of Procurement	Empanelled Vendor if any	Mode of Last procurement, if made (Limited quote/ open tender/ proprietorship contract)

(\* ) The tentative value is a vital element in establishing the reasonableness of the prices to be paid and, therefore, it is important that the same is worked out in a realistic and objective manner on the basis of prevailing market rates, the market trend and assessment based on Intrinsic value or past rate, if available etc.

# Chapter - III

# Procurement of

# Goods

### 3.1 Definition and Applicability of Procurement of Goods

The term 'goods' defined in the Procurement of Goods manual includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other goods (but excludes books, publications, periodicals, and so on, for a library), or intangible products like software, technology transfer, licenses, patents or other intellectual properties. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance.

What is unique about procurement of goods (as compared to services and works) is the ability to precisely describe the technical specification of the requirement.

These procurement guidelines would continue to apply if IFCI outsources the procurement process or bundle the procurement process with other contractual arrangements or utilize the services of procurement support agency or procurement agents to carry out the procurement on its behalf. **Procurement process as mentioned below is to be followed only after checking the availability of the product in GeM portal. However, Technical specification, RFP as applicable for GeM may be followed wherever applicable.**

### 3.2 Formulation of Specifications and Procurement Planning

#### 3.2.1 Formulation of Technical specifications (TS)

The Department/ RO should ensure that specifications are developed to ensure VfM, level playing field and wide competition in procurement. The TS constitute the benchmarks against which the technical responsiveness of bids will be verified and evaluated.

#### 3.2.2 Obtaining Technical Specifications

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

- i) Scope of supply and, also, end use of the required goods;
- ii) All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
- iii) Special requirements of preservation, packing and marking, if any;
- iv) Inspection procedure for goods ordered and criteria of conformity;
- v) Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- vi) Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales

- service and Annual Maintenance Contract (AMC) requirements, if any;
- vii) Warranty requirements;
- viii) Qualification criteria of the bidders, if any; and
- ix) Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

### 3.2.3 Procurement Planning

After preparation of the Indent, the Department/ RO should take following decisions to initiate procurement,

- i. Review the description and TS for completeness/approvals/funding, VfM and possibility of the widest competition;
- ii. Determine and declare in documents, any limitation on participation of bidders as per the IFCI's procurement policy regarding preference to certain sections of industry, if any.
- iii. The User Department/ RO shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or prequalification criteria for the bidders;
- iv. Selection of a system of bidding (single/ two stage; single/ two bids; suitability for e-procurement);
- v. Selection of the mode of procurement (open tenders, limited tenders, single tenders, and so on);
- vi. Decisions on the timeframe for completing various stages of procurement, which should be declared in the pre-qualification/ bidder registration or bidding documents.

## 3.3 Modes of Procurement and Bidding Systems

The various modes of procurement that can be used are:

### 3.3.1 Open Tender Enquiry(OTE)

This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. *The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.* OTE procedures through e- procurement or through traditional tendering should be adopted in the following situations:

- i) Procurements exceeding the threshold of Rs.25 Lakh (Rupees Twenty Five Lakh);
- ii) All common use requirements with clear technical specifications;
- iii) For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and
- iv) When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below Rs. 25 (Rupees twenty-five) Lakh, OTE mode may be used, if warranted.

### Terms and Conditions

- i) Bidders already registered are also free to participate;



- ii) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) (not to be given if procurement is done through GeM), on GeM and on IFCI's website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- iii) The sale/ availability for downloading of tender documents should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.

### 3.3.2 Limited Tender Enquiry (LTE) [up to Rs. 25 Lakh]

LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. *This mode provides a short and simple procedure. LTE procedures should be default mode of procurement when the estimated value of procurement is between Rs. 2.5 Lakh to Rs. 25 Lakh (Rupees two and a half Lakh to Twenty-five Lakh).*

#### Terms and Conditions

Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are registered vendors/ contractors.

A simplified single Page Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the CA, duly recording the reasons.

### 3.3.3 Special Limited Tender Enquiry for Procurements More than Rs.25 Lakh (under special circumstances)

LTE mode, even for values higher than Rs. 25 Lakh, where normally OTE should have been done, is permissible in certain special circumstances as follows. *This mode has the merit of being quicker but VfM obtained may be less than in case of OTE; hence it should be restricted to rare situations.*

- i) The competent authority (as per DOP for procurement) certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved, if any, by not procuring through advertised tender enquiry is justified in view of urgency. The nature of the urgency and reasons why the procurement could not be anticipated earlier should also be recorded.
- ii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- iii) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.; and
- iv) Government policy designates procurement from specific agencies.

## Terms and Conditions

- i) The tendering process would be same as in the case of a normal LTE described above. However, the bidding documents are more detailed as in the case of OTE; and
- ii) It should be certified that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. User Dept. should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

### 3.3.4 Proprietary Article Certificate (PAC)

In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a Proprietary Article Certificate (PAC) signed by the appropriate authority. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and also strains the transparency principle, it should be used only in justifiable situations.*

## Terms and Conditions

- i) Users should enclose, with their Indent, a PAC certificate indicating the justification, for sourcing an item from OEM or PAC firms or their authorised agents;
- ii) Proprietary items shall be purchased only from a nominated manufacturer, or its authorised dealer as recorded in the PAC certificate;
- iii) In certain unavoidable cases, there may be no alternative but to waive payment of Earnest Money Deposit (EMD)/ Security Deposit (SD) for procurement on a proprietary basis;
- iv) To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organisations;

In case of PAC/ single tender procurements;

- a) Reports relating to such awards should be submitted to the Board of Directors of IFCI every quarter;
- b) Internal Audit Department may be required to check at least 10 (ten) per cent of such cases; and
- c) Details of contracts more than Rs 10 lakhs should be published on the IFCI's website

### 3.3.5 Single Tender Enquiry (STE) without a PAC

A tender invitation to one firm only without a PAC certificate is called a single tender. *This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions:*

- i) In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
- ii) For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and

approved by the competent authority), the required goods are to be purchased only from a selected firm.

### Terms and Conditions

- i) The reasons for a STE and selection of a particular firm must be recorded and approved by the Competent Authority as per the delegation of powers , prior to single tendering
- ii) Other terms and conditions of PAC procurement mentioned above would also apply in this case.

All works/ purchase/ consultancy contracts awarded (greater than Rs 25,000/-) on nomination basis should be brought to the notice of Board of directors of IFCI for information on quarterly basis;

### 3.3.6 Drawals against Rate Contract (RC)/ Framework Contract (FC)

- a) Rate Contract (RC) is essentially a price agreement with the vendors/ contractors at a specified price and terms and conditions during the period covered by the RC. No quantity is mentioned nor is any minimum commitment guaranteed in the RC. RC is most frequently used in procurement of goods, but can as well be used mutadis mutandis in works, services and consultancy - where it is commonly known as a Framework Contract (FC). In view of Government e- Marketplace coming into operation, Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM and will now be applicable only for specialized and engineering items **which are not available on GeM**, and are identified as common use items and are needed on recurring basis.

### 3.3.7 Direct Procurement without Quotation

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

- i) Procurements do not exceed the threshold (for each requirement) of Rs.25,000 (Rupees Twenty-five Thousand) for each case;
- ii) The requirement is urgent but was not covered in the procurement plan; and
- iii) The requirement is for off-the-shelf goods of simple and standard specifications.

### Terms and Conditions

- i) The competent authority can initiate and complete this purchase after diligent enquiries from the market
- ii) In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.
- iii) Selection of seller by diligent market enquiry is of essence of this mode of procurement.

- iv) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

### 3.3.8 Direct Procurement by Purchase Committee

This mode of procurement is used for procurements valued above Rs.25,000/- (Rupees Twenty-five Thousand) and upto Rs.2,50,000 (Rupees Two Lakh Fifty Thousand) only on each occasion. It is made by a local purchase committee only in case when a certain **item is not available on the GeM portal** (of required specification or within required delivery period etc.). However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR & PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also.

#### Terms and Conditions

- i) This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.
- ii) Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini-LTE) is of essence of this mode.
- iii) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed; and
- iv) In larger cities, the presence of reputed shopping malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

### 3.3.9 Bidding Systems

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/ criticality of technical requirements and value of procurements. Following types of bidding systems may be used.

#### 3.3.10 Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelope or in multiple envelopes system. This bidding system is suitable where technical requirements are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

##### A. Single Stage Single Envelop System:

Where qualitative requirements and technical specifications are clear; capability of source of supply isn't critical and value of procurement is low or moderate, the single envelop system, where eligibility, technical/commercial and financial details are submitted together in the same envelop may be followed. This is the simplest and the quickest bidding system and should be the default system of bidding. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as

successful.

## B. Single Stage Two Envelops System (Two Bid System):

In technically complex requirements but where capability of source of supply is still not crucial and value of procurement is not low, a two envelop system may be followed.

The tenderers should be asked to bifurcate their quotations in two envelops. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelops are to be submitted together in a sealed outer envelope;

## C. Single Stage Multiple Envelops System with pre-qualification:

Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (**as described below**, a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised by him. Strictly speaking, this is not a pre-qualification but a post-qualification of bidders. In the first instance on the bid opening date only the PQB envelops (**also containing the EMD and other eligibility documents**) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelops of unqualified bidders are returned un-opened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery;

- i) **Pre-qualification Bidding (PQB):** In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipment), besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding - please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC - for example, i) past experience of similar contracts, ii) performance capability and iii) financial strength) prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQB) should meet the norms of transparency, fairness and maintenance of competition. ***PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of goods and an eligibility criteria clause as part of single/two envelop/cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage should not be done in following circumstances'***
- a) Where procurement can be done through limited tender enquiries;
  - b) Where there are at least three registered bidders of the category and grade matching tendered scope of procurement and financial limit;
  - c) Where the requirement is technically and commercially simple enough that pre-qualification

- of the bidder is not crucial for the performance of the contract, for example, Commercially Off The Shelf (COTS) requirements; and
- d) Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high.
- ii) **Pre-qualification Criteria (PQC):** PQC should be unrestrictive enough so as not to leave out even one capable vendor/ contractor. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/ contractor and thus vitiate fair competition for capable vendors/ contractors. Due consideration should be given while framing PQC, to its effect on adequacy of competition.
- iii) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantities of requirements. A minimum period of 45 (forty-five) days may be allowed for the submission of PQBs. In the case of urgency, the time limit may be reduced to 30 (thirty) days.
- iv) **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per eligibility criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The qualifications of bidders shall be evaluated in accordance with the PQC specified. Due publicity to the particulars of the bidders that are qualified should be done on the relevant portals/ websites.
- v) **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, IFCI shall invite bids for procurement (Request for Proposals - RfP) from prequalified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

### 3.3.11 Two Stage Bidding - Expression of Interest Tenders - Market Exploration

There are instances where the equipment/ plant to be procured is of complex nature and IFCI may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. In such cases, it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/ presentations with the experienced manufacturers/ suppliers in a transparent manner. Expression of Interest (EoI) bids may be invited in following situations:

- i) It is not feasible to formulate detailed specifications or identify specific characteristics for the

subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;

- ii) The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
- iii) If the contract is for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- iv) The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.

The procedure for two stage bidding shall include the following, namely:

In the first stage of the bidding process, IFCI shall invite Eol bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/ presentations may be held with the short-listed manufacturers/ suppliers, which are prima facie considered technically and financially capable of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage other stakeholders can be added in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/ presentations so held, one or more acceptable technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc. in a manner that is consistent with the objectives of the transparent procurement:

- i) In revising the relevant terms and conditions of the procurement, if found necessary as a result of discussions with the shortlisted bidders, IFCI shall not modify the fundamental nature of the procurement itself;
- ii) In the second stage of the bidding process, IFCI shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement; and
- iii) Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to modification in the specifications or terms and conditions, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.
- iv) If IFCI is of the view that after Eol stage, there is likelihood of further participation by many more bidders and to avoid getting trapped into a legacy technology, the second stage bidding may not be restricted only to the shortlisted bidders of Eol stage and it may be so declared in the Eol document ab-initio. Thereafter in the second stage, normal OTE/ GTE bidding may be done. Such variant of Eol is called 'Non-committal' Eol.

## 3.4 Evaluation of Bids and Award of Contract

### 3.4.1 Tender Evaluation

All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of IFCI. 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. **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.**

### **Clarification of Bids / Shortfall Documents**

During evaluation and comparison of bids, IFCI may, at its discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, their tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/ VAT/GST 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 supply order without its completion/ performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

### **Evaluation of Techno-Commercial Bid**

In evaluation of the techno-commercial bid, conformity of the eligibility/ qualification, technical and commercial conditions of the offered goods to those in the bid document is ascertained. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation.

#### **i) Evaluation of eligibility/ qualification Criteria:**

IFCI 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 IFCI'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 tender as well as such other allied information as deemed appropriate by IFCI.

## **ii) Evaluation of Technical Suitability:**

The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/ makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/ deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/ deviations should not grant the tenderer any undue advantage vis-a-vis other tenders and IFCI.

## **iii) Evaluation of Commercial Conditions:**

The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions 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-a-vis other tenders and IFCI.

## **iv) Considering Minor Deviations:**

IFCI may allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:

- a) Affects, in any substantial way, the scope, quality or performance of the goods and related services specified in the contract;
- b) Limits, in any substantial way, inconsistent with the tendering documents, IFCI's rights or the tenderer's obligations under the contract; or
- c) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.

## **v) Declaration of Successful Bidders:**

If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid 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.

## **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 IFCI in accordance with the provision of internal guidelines shall not be subject to review.

### **Extension of Tender Validity Period In general:**

**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.

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

- a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive; and
- ix) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

### **Variation of Quantities at the Time of Award**

At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data, since the ground situation may have very well changed. The tendered quantity can be increased or decreased by 25 (twenty-five) per cent for ordering, if so warranted. This may be mentioned in the tender documents on need basis.

### **Splitting of Contracts/ Parallel Contracts**

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

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

Before splitting the quantity, it should be ensured that the L1 price is reasonable. If it is not reasonable, negotiation with the L1 party may be carried out, if justifiable, with the approval of the CA. The following guidelines are to be considered while opting for parallel contracts:

- i) L1 should be awarded at least the percentage mentioned above or his spare supply capacity, whichever is lower; and
- ii) For the rest of the contract quantity, the lowest rate accepted will be counter offered to the L2 party. On acceptance of the counteroffer, the order will be placed on L2 for the respective percentage or the spare supply capacity of the L2 bidder, whichever is lower, and so on, to other tenderers. In case of non- acceptance of the counteroffer by the L2 party, a similar offer shall be made to L3 and L4, and so on.

### **3.4.2 Preparation and Vetting of Comparative Statement**

Except in cases upto Rs.25 Lakh (Rupees Twenty Five Lakh) a comparative statement of quotations received should be prepared 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.

### 3.4.3 Preliminary Examination

**Unresponsive Tenders:** Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- i. The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii. The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii. The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered MSE unit but the tenderer is a, say, a large scale unit);
- iv. The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;
- v. The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- vi. Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

### 3.4.4 Evaluation of Responsive Bids and Decision on Award of Contract

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of single stage single envelop bidding, the evaluation of qualification of bidders, 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 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 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. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive and ignored. All tenders received will first be scrutinised by the TC to see whether the tenders meet the basic requirements as incorporated in the Bid document and to identify unresponsive tenders, if any. Some important points on the basis of which a tender may be declared as unresponsive and be ignored during the initial scrutiny are:

- i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered MSE unit but the tenderer is a, say, a large scale unit);
- iv) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;
- v) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- vi) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

### 3.4.5 Deliberations by the Tender Committee for Award of Contract

#### Timely Processing of Tenders

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. 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. The suggestive time schedule in Table below is a guideline for finalising contracts against various modes of procurements:

#### Indicative time schedule\*

Sl. No.	Mode of Procurement	Days
1	Open Tender (e-Tendering)	21
2	Procurement through Registered Vendors/ Limited Tenders	15
3	Limited Tender on Urgent basis	11

\* Concerned Department Head/ RO head may decide time allowed for bid submission based on the business requirement of the Department/ RO.

#### 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, IFCI is unable to decide on the placement of the contract within the original validity period, it may 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 be tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

### **Non-conformities between Figures and Words**

This should be taken care of in the manner indicated below:

- i) If, in the price structure quoted for the required goods, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity), the unit price shall prevail and the total price corrected accordingly;
- ii) If there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail and the total shall be corrected; and
- iii) If there is a discrepancy between words and figures, the amount in words shall prevail.
- iv) Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to IFCI's observation, the tender is liable to be rejected.

### **Reasonableness of Prices**

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable.

Where there is no estimated cost, a comparison with Last Purchase Price (LPP - the price paid in the latest successful contract) is the basis for judging reasonableness of rates.

### **Consideration of Abnormally Low Bids**

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

In the case of predatory pricing as well, IFCI may refer to the above consideration of Abnormally Low Bids to in finalization of tenders.

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

### 3.4.6 Award of Contract

#### Letter of Authorization (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 / email that his bid has been accepted. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 (fourteen) days).

In respect of contracts for purchases valued Rupees two and a half Lakh and above the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.

### 3.5 Rate Contract and other Procurements with special features

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

- a. **Period of Rate Contract:** The period of a Rate Contract should normally be one year for stable technology products. However, in special cases, shorter or longer period not more than two years may be considered.
- b. **Special Conditions applicable for Rate Contract:** Some conditions of rate contract differ from the usual conditions applicable for ad hoc contracts. Some such important special conditions of rate contract are given below:
  - i. In the Schedule of Requirement, no quantity is mentioned; only the anticipated drawl is mentioned without any commitment
  - ii. The purchaser reserves the right to conclude one or more than one rate contract for the same item. The purchaser as well as the supplier may withdraw the rate contract by serving suitable notice to each other. The prescribed notice period is generally fifteen days.
  - iii. The purchaser has the option to renegotiate the price with the rate contract holders.
  - iv. In case of emergency, the purchaser may purchase the same item through ad hoc contract with a new supplier.
  - v. The purchaser and the authorized users of the rate contract are entitled to place online supply orders up to the last day of the validity of the rate contract and, though supplies against such

supply orders will be effected beyond the validity period of the rate contract, all such supplies will be guided by the terms & conditions of the rate contract.

- vi. The rate contract will be guided by "Fall Clause".
- c. **Parallel Rate Contracts:** If a single supplier does not have enough capacity to cater to the entire demand of an item. Therefore, the rate contracts are concluded with different suppliers for the same item. Such rate contracts are known as Parallel Rate Contracts.
- d. **Conclusion of Rate Contracts including Parallel Rate Contracts:** Techniques for conclusion of rate contract is basically identical to that of ad hoc contract. Identical tender documents may be utilized for conclusion of rate contracts subject to inclusion therein the special terms & conditions as applicable for rate contracts. In the first instance, the rate contract is to be awarded to the lowest responsive tenderer (L1). However, depending on the anticipated demand of the item, location of the users, capacity of the responsive bidders, reasonableness of the prices quoted by the responsive bidders, etc. it may become necessary to award parallel rate contracts also. For the sake of transparency and to avoid any criticism, all such parallel rate contracts are to be issued simultaneously.

**Fall Clause:** Fall clause is a price safety mechanism in rate contracts. The fall clause provides that if the rate contract holder reduces its price or sells or even offers to sell the rate contracted goods or services following conditions of sale similar to those of the rate contract, at a price lower than the rate contract price, to any person or organization during the currency of the rate contract, the rate contract price will be automatically reduced with effect from that date for all the subsequent supplies under the rate contract and the rate contract amended accordingly. Other parallel rate contract holders, if any, are also to be given opportunity to reduce their price as well, by notifying the reduced price to them and giving them 07 (seven) days time to intimate their revised prices, if they so desire, in sealed cover to be opened in public on the specified date and time and further action taken as per standard practice. On many occasions, the parallel rate contract holders attempt to grab more orders by unethical means by announcing reduction of their price (after getting the rate contract) under the guise of Fall Clause. This situation is also to be dealt with in similar manner as mentioned in the preceding paragraph. It is however, very much necessary that the purchase organizations keep special watch on the performance of such rate contract holders who reduce their prices on one pretext or other. If their performances are not up to the mark, appropriately severe action should be taken against them including deregistering them, suspending business deals with them, debarring them for two years from participating against the tender enquiry floated by concerned purchase organization etc.

The provisions of fall clause will however not apply to the following:

- i. Sale of goods or services as original equipment prices lower than the price charged for normal replacement;
- ii. Sale of goods such as drugs, which have expiry date;
- iii. Sale of goods or services at lower price on or after the date of completion of sale/placement of order of goods or services by the authority concerned, under the existing or previous Rate Contracts as also under any previous contracts entered into with the Central or State Government Departments including new undertakings (excluding joint sector companies and or private parties) and bodies.



**Performance Security:** Depending on the anticipated overall drawal against a rate contract and, also, anticipated number of parallel rate contracts to be issued for an item, IFCI shall consider obtaining Performance Security @ **5%** (five percent) of the value of supply order in the supply orders issued against rate contracts on the rate contract holder.

**Renewal of Rate Contracts:** It should be ensured that new rate contracts are made operative right after the expiry of the existing rate contracts without any gap for all rate contracted items. In case, however, it is not possible to conclude new rate contracts due to some special reasons, timely steps are to be taken to extend the existing rate contracts with same terms, conditions etc. for a suitable period, with the consent of the rate contract holders. Rate contracts of the firms, who do not agree to such extension, are to be left out. Also, while extending the existing rate contracts, it shall be ensured that the price trend is not lower.

### 3.5.1 Handling Procurement in urgencies/ Emergencies and Disaster Management

Use of following modes of procurements may be utilised in order of speed to tackle procurements in urgent/ emergent and Disaster Management situations:

- i) Direct Procurement Without Quotation
- ii) Direct Procurement by Purchase Committee
- iii) SLTE/ Limited/ Single Tender Enquiry, with reduced time for submission of Bids

### 3.5.2 Buy Back Offer

When it is decided to replace an existing old item(s) with a new/better version, IFCI may trade the existing old item while purchasing the new one by issuing suitable bidding documents for this purpose. The condition of the old item, its location and the mode of its handing over to the successful bidder are also to be incorporated in the bidding document. Further, the bidder should be asked to quote the prices for the item (to be offered by them) with rebate for the old item and also, without any rebate (in case they do not want to lift the old item). This will enable IFCI either to trade or not to trade the old item while purchasing the new one.

### 3.5.3 Annual Maintenance Contract (AMC)

- i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, IFCI may enter into a maintenance contract.
- ii) The maintenance contract may be entered into either with the manufacturer/ supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/ supplier of the goods in question.
- iii) If the maintenance contract is to be entered into with the supplier of the goods, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to consider its suitability for purchase. While evaluating the

tenderers for maintenance of goods covering a longer period (say, three to five or more years depending on the life-span of the equipment), the quoted prices pertaining to maintenance in future years are to be discounted (as per DCF technique) to the net present value as appropriate for comparing the tenders on an equitable basis and deciding the lowest evaluated responsive tender.

- iv) However, if the maintenance contract is to be entered into with a competent and eligible supplier separately, then a separate tender enquiry is to be floated for this purpose and tenders evaluated and ranked accordingly for placement of the maintenance contract. Here, the supplier of the goods may also quote and his quotation, if received, is to be considered along with other quotations received.
- v) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired.
- vi) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties (liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations.
- vii) It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by IFCI, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period.
- viii) A suitable provision should be incorporated in the tender enquiry document and in the resultant maintenance contract indicating that the prices charged by the maintenance contractor should not exceed the prevailing rates charged by him from others for similar services. While claiming payment, the contractor is also to give a certificate to this effect in his bill.
- ix) If the goods to be maintained are sophisticated and costly, the tender enquiry document should also have a provision for obtaining performance security. The amount of performance security will depend on the nature of the goods, period of maintenance, and so on. It generally varies from two and a half to five per cent of the value of the equipment to be maintained.
- x) Sometimes, the maintenance contractor may have to take the goods or some components of the goods to his factory for repair, and so on. On such occasions, before handing over the goods or components, valuing more than Rupees One Lakh, a suitable

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

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

## 3.6 Contract Management

### 3.6.1 Contract Management

The purpose of contract management is to ensure that the contract delivers the desired outcomes as per the terms and conditions of the contract. It also ensures that the payments made to the contractor match the performance. Implementation of the contract should be strictly monitored and notices issued promptly whenever a breach of provisions occurs. Monitoring should ensure that contractor adheres to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that *"we get what we pay and contract for and pay for only for what we get"*. Normally, the following issues are handled during this phase:

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

#### **Costs of delay in Contract Management Decisions: Delays**

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time.

### 3.6.2 Amendment to the Contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/ inescapable, any modification will be carried out with the prior approval of the CA.

Requests for such changes and modifications mostly emanate from the supplier. Any amendment to the contract may have, inter alia, financial/technical/legal implications. The indenter may be consulted regarding the technical implications. Financial concurrence should be obtained before issuing any amendment that has financial implications/repercussions. Further, if considered necessary, legal opinion may also be sought.

An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:

- i) Increase or decrease in the quantity required, exercise of quantity option clause;
- ii) Changes in schedule of deliveries and terms of delivery;
- iii) Changes in inspection arrangements;
- iv) Changes in terms of payments and statutory levies; and
- v) Change due to any other situation not anticipated.

Post contract variation carried out in the form of an amendment shall be published by the purchaser on the same e-procurement portals/Websites that were used for publication of the original tender enquiry. No change in the price quoted shall be permitted after the purchase order has been issued, except on account of price variation, ERV and statutory variations.

### 3.6.3 Operation of Option Clause

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

Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) Lakh should invariably include this clause. However, the CA may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in continuity of supplies. The clause may be framed along following lines:

*"The purchaser reserves the right to increase/decrease the ordered quantity by up to [25]per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)".*

**Conditions Governing Operation of Option Clause:** Additional demands should be available for coverage and over-provisioning may be avoided by keeping the officers concerned with provisioning/tender evaluation for the next cycle of procurement informed. The following points must be kept in mind while operating the option clause:

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

### 3.6.4 Safeguards for Handing over Materials/Equipment

**Materials/ Equipment to Contractors:** For performance of certain contracts, it may be required to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the possibility of provision of such resources should be announced in the tender document or at least requested by the contractor in the tender and written in the contract. Whenever stores or prototypes or sub-assemblies are required to be issued to the firm/contractor for guidance in fabrication, these should be issued against an appropriate bank guarantee. In addition to the bank guarantee, appropriate insurance may be asked for if it is considered necessary. Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition. Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs.1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs,

this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

### 3.6.5 Payments to the Contractor and Handling of Securities

It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be cross-checked with the actual receipt of material to ensure that the payment matches the actual performance.

Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Before making a final payment or before releasing the performance bank guarantee, a 'No Claim Certificate' may be insisted upon from the supplier to prevent future claims. Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

**Delay in payment to the contractors:** In case of unwarranted discretionary delays in payments, as prescribed above, responsibility shall be fixed on the concerned officers.

### 3.6.6 Monitoring of Supplier Performance

As soon as the order is issued, entry shall be made in the progress of supply order register recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials.

### 3.6.7 Delays in Performance of Contract

**Delivery Period:** The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract. The delivery period stipulated in contracts should be specific and practical. Vague and ambiguous terms such as 1,000/5,000 (one to five thousand) numbers per month, 2 to 16 (two to sixteen) weeks from the date of receipt of order, 'immediate', 'ex-stock', 'as early as possible', 'off the shelf', 'approximately' and the like should be scrupulously avoided as these will not be legally binding.

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

**Terms of Delivery:** Terms of delivery (FOR, FOB, CIF, and CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the

purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms.

**Severable and Entire Delivery Contracts:** Such contracts, where instalments are not specified or not intended, are known as entire contracts. In such cases, even non-delivery of a part quantity can lead to a breach of contract. In the case of an entire contract, even if providing a delivery schedule, it is not necessary to grant an extension in the delivery period in the case of delay in intermediate instalments. Such extension would be necessary only in case of a delay beyond the final date for the completion of the delivery.

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

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

**Extension of Delivery:** Suppliers shall be required to adhere to the delivery schedule specified in the purchase order and, if there is delay in supplies, LD shall be levied wherever there is failure by the party. Extension of the delivery date amounts to amendment of the contract. Such an extension can be only done with the consent of both parties (that is, the purchaser and supplier). No extension of the delivery date is to be granted suo motu unless the supplier specifically asks for it. However, in a few cases, it may be necessary to grant an extension of the delivery period suo motu in the interest of IFCI. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.

*No correspondence should be entered into with the supplier after expiry of the contract delivery period or towards the end of it, which has the legal effect of condoning the delay/breach of contract. When it is necessary to obtain certain information regarding past supplies, it should be made clear that calling for such information is not intended to keep the contract alive and that it does not waive the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. The last line of such a communication should therefore be: "This letter is issued without any prejudice to IFCI's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation."*

If at any time during the currency of the contract, the supplier encounters conditions hindering timely delivery of goods, he shall promptly inform the concerned officer in writing. He should mention its likely duration and make a request for extension of the schedule accordingly. On receiving the supplier's communication, IFCI shall examine the proposal and, may agree to extend the delivery schedule, with or without LD and with or without the denial clause, for completion of the contractor's contractual obligations, provided:

- i) That a higher rate in the original tender was not accepted against other lower quotations in

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

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

Extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

**Delay in Supplies for which Supplier is not Responsible:** Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i) Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier.

**Performance Notice:** A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above.

### 3.6.8 Breach of Contract, Remedies and Termination

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 supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract



alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases:

### **Cancellation of Contract for Default**

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

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
- iii) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
  - a) Forfeiture of the performance security;
  - b) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
  - c) However, the supplier shall continue to fulfil the contract to the extent not terminated.

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

### **Termination of Contract for Insolvency**

If the supplier 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 supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to IFCI.

### **Termination of Contract for Convenience**

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

### 3.6.9 Dispute Resolution

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

**Arbitration Clause:** If an amicable settlement is not forthcoming, recourse may be taken to the settlement of disputes through arbitration as per the Arbitration and Conciliation Act 1996. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the Standard Bid Document indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

**Arbitration and dispute resolution:** 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.

**Arbitration Awards:** In cases where IFCI 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 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 IFCI should the subsequent court order require refund of the said amount.

### 3.6.10 Closure of 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. At least in large contracts [above Rs. 25(Rupees 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:

### 3.6.11 Goods Receiving

**Material Reconciliation:** The stores and/or the indenter should confirm that all materials ordered in the contract and paid for have been received in good condition and there is no shortfall. Full reconciliation of all raw material, part, assembly provided to the contractor should be done including wastages and return of scrap/off-cuts.

### 3.6.12 Quality Assurance and Inspection

Besides material 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 material/equipment supplied;
- ii) Installation and commissioning;
- iii) Support service during the warranty period which has ended on\_\_\_\_\_;
- iv) Training of operators/maintenance staff;
- v) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- vi) Support during annual maintenance contract (if it was part of the contract) which has ended on\_\_\_\_\_.

### 3.6.13 Storage and Issue of Inspected Goods

After satisfactory inspection and tests, the accepted materials should be stamped, labelled, marked, or sealed and stored in a systematic manner. This is to facilitate easy retrieval at a later stage. As all goods needed or procured cannot be consumed at one point of time, storage is an inevitable process. The storage system forms the key component of any materials management system. It should be ensured that the goods are stored in such conditions that they are protected against unauthorised removal and deterioration.

## 3.7 Disposal of Scrap Goods

### 3.7.1 Scrap for Disposal

"Scrap" is the material which is neither usable for the purpose for which it was originally procured nor of any other operational value. It should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.

### 3.7.2 Classification and Categorisation

Properly grouped and sorted scrap is likely to attract better value and help in keeping historical data of prices and facilitates fixing of reserve prices.

### 3.7.3 Survey of Materials for Classifying as Scrap for Disposal

Before any item can be sold as 'scrap', a survey should be done for this purpose. The need for

survey is relaxed in case of scrap like Newspapers, containers etc. of small value (Rs.5,000 - Rupees Five Thousand).

**Survey of Scrap:** Generally, items may be identified as scrap in any of the following cases:

- i) Whether the item has completed its expected useful life or not, factors such as norms for maintenance cost; norms for utilisation of such equipment; usability in the organisation or any other office must also to be considered before deciding on scrapping the equipment; and
- ii) The item has a limited shelf life, exists in surplus quantities and there is likely to be no future use of the item during the remaining period of its useful life.

The reasons for declaring the item surplus or obsolete or unserviceable should be recorded by the Survey Committee (SC).

### 3.7.4 Modes of Disposal

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

- i) Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 5,000 (Rupees Five thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis; and
- ii) Scrap upto Rupees Two Lakh may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.
- iii) Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above Rupees Two Lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;
- iv) Certain useable machinery/ spare which may still be useable should be disposed at book value plus 20 (twenty) per cent (7.5 (seven and a half) per cent freight +12.5 (twelve and a half) per cent handling charges) directly to the concerned organisation.
- v) **Sales by Submission of Tenders:** Disposal may also be done by submitting bids in response to public invitations for tenders for supplying materials, whether such invitations are issued by Government Departments, PSUs or by private bodies. This method of sale is particularly suitable where it is proposed to dispose of its 'overstocks' and surplus stores' which are in fit to use condition.
- vi) Scrap which is a security or safety risk (stamps, negotiable instruments, money value documents, security press items) may be destroyed suitably in an eco-friendly manner in accordance with guidelines of Central Pollution Control Board (CPCB) or State Pollution Control Board (SPCB) in the presence of a committee after obtaining CA's approval. The committee should issue a certificate of having destroyed these. Video recording may also be done of such disposal.
- vii) **Sale of hazardous waste items** would be governed by the following procedures in addition to guidelines/ notifications issued by the Central Pollution Control Board (CPCB)/ Ministry of Environment and Forests (MoEF) from time to time:
  - a) Sale of old batteries/lead acid batteries will be governed by the Batteries

- (Management & Handling) Rules, 2001 or as amended from time to time;
- b) Sale of other categories of hazardous waste items will be governed by the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 or as amended from time to time;
  - c) Sale of e-waste shall be governed by E-Waste (Management) Rules, 2016 or as amended from time to time;
  - d) Bidders must submit a notarized copy of the valid registration certificates issued by the State (or Union Territory) Pollution Control Board (SPCB) and produce it at the time of taking delivery of the materials, failing which their bid will be liable for rejection. In case of lead acid batteries, used/waste oils and nonferrous metal wastes, in addition to submitting necessary valid registration from the SPCB, the bidder must also submit a notarized copy of the valid registration certificate from CPCB (or MoEF); and
  - e) In case of a sale involving inter-state movement of goods, the buyer shall also submit an NOC from the concerned SPCB, with whom the buyer is registered, to the seller before taking delivery, failing which the buyer will be responsible for the consequences and the seller shall take further decision as may be deemed fit.

### 3.7.5 Preparation for Disposal

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

### 3.7.6 Conditions of Disposal Applicable to all Modes of Disposal

**'As-Is-Where-Is' basis:** Notwithstanding anything contained in the e-auction or advertisement issued on the description and particulars of material for sale, the sale is on 'as-is-where-is' basis only and the principle of caveat emptor (let the buyer be aware) will apply. As is where is means that the description/quality/quantity indicated are approximate and the seller does not give any assurance or guarantee that the material will strictly adhere to the advertisement or e-auction. All items shall be taken delivery of from the site by the successful bidders, with its faults and errors in description, if any. Neither can the sale be invalidated nor the bidder make any claim/compensation, whatsoever, on account of any defect in description or deficiency in the quantity and quality. No plea of misunderstanding or ignorance of conditions put forth subsequent to a confirmation of sale shall be accepted.

**Inspection by Bidders:** In view of the 'as-is-where-is' condition, bidders are advised to quote rates only after inspection of items at the site. The bidder or his authorised representative may inspect the materials as per the inspection schedule mentioned in the auction details at the location specified against each lot with the prior permission.

**Right to Reject all Bids:** The seller reserves the right to accept/reject and cancel any bid, amend the quantity under any lot or withdraw any lot at any stage before or after acceptance of bid/issue of acceptance letter/sale order/delivery order/deposit of the full sale value by the bidder, without assigning any reason thereof and the value of such material, if paid for, shall be refundable. The seller shall not be responsible for damage/loss to bidders on account of such withdrawal at any stage from the sale.

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

### 3.7.7 Disposal through Tender

Disposal through tender could take place through the e-procurement portal or normal tendering. In the bidding documents, Conditions of Sale may be laid out.

The broad steps to be adopted for this purpose are:

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

- offered by the highest acceptable bidder. The minimum quantity to be accepted shall be indicated in the tender;
- h) If the tenderer's offer is not accepted, the tenderer's EMD shall be refunded to him. No interest shall be payable on such refunds. The EMD deposited by the successful tenderer shall be refunded after receipt of final payment. This amount may also be adjusted against total amount receivable;
  - i) The offer should be examined by the Tender Committee (TC) and TC recommendations should be accepted by the Competent Authority;
  - j) The acceptance letter/sale order would be issued to the successful bidder(s) notifying the amounts and schedule of submission of SD and Balance Sale Value (BSV);
  - k) Successful tenderers, herein after referred to as purchasers, shall have to submit a SD @ 25 (twenty-five) per cent of the total sale value of the contract within seven calendar days of the issue of the acceptance letter/sale order (excluding the date of issue). The SD shall be deposited in the form of bank draft/pay order/RTGS/NEFT;
  - l) Balance Sale Value (BSV): The successful bidder in an e-auction or tender sale may be allowed 15 (fifteen) calendar days (including the date of acceptance letter/sale order) for payment of BSV. Extension may be granted after taking into consideration the prevailing market rates and trends, for the payment of BSV with/without late payment charges @ one per cent per week or part thereof up to two weeks only and, thereafter, the SD will stand forfeited without notice. Extensions should not be granted as a matter of routine. The date of submission of the demand draft in the cash office is the date of payment for all purposes. No interest will be paid to the purchaser for the amounts paid or deposited and subsequently found refundable to the purchaser under any of the conditions of the contract; and;
  - m) Delivery Order: Delivery Order is an essential document required to be produced to take delivery of the material from the custodian and therefore after depositing BSV, the Delivery Order should be issued and the delivery should be made to purchaser or his agent on the strength of the Delivery Order and after verifying receipt of payment.

### 3.7.8 Disposal through Auction

- i. IFCI may undertake auction of goods to be disposed of either directly or through approved auctioneers;
- ii. The basic principles to be followed here are similar to those applicable for disposal through the advertised tender so as to ensure transparency, competition, fairness and elimination of discretion. The auction plan including details of the goods to be auctioned and their location, applicable terms and conditions of the sale, and so on, should be given wide publicity in the same manner as is done in case of the advertised tender;
- iii. While starting the auction process, the condition and location of the goods to be auctioned, applicable terms and conditions of sale, and so on, (as already indicated earlier while giving wide publicity to it), should be announced again for the benefit of the assembled bidders;
- iv. During the auction process, acceptance or rejection of a bid should be announced immediately on the stroke of the hammer. If a bid is accepted, SD (not less than 25 (twenty-five) per cent of the bid value) should immediately be taken on the spot from the successful bidder either in cash or in the form of deposit-at-call-receipt, drawn in favour of the FA of the disposing organisation. The goods should be handed over to the successful bidder only after receiving the balance payment as in case of sale through tenders;
- v. The composition of the auction team will be decided by the CA.

### 3.7.9 Disposal at scrap value or by other modes

If IFCI is unable to sell any surplus or obsolete or unserviceable item at the reserve price, in spite of its attempts through an advertised tender or auction, the same may be disposed off at its scrap value with the approval of the CA. In case IFCI is unable to sell the item even at its scrap value, IFCI may adopt any other mode of disposal including destruction of the item in an eco-friendly manner.

### 3.7.10 Delivery of Sold Material

**Free Delivery Time and Ground Rent:** Delivery has to be taken within 30 (thirty) calendar days (called free delivery period) from the date of the acceptance letter/sale order (excluding the date of issue of acceptance letter/sale order). The delivery of material will be given only after realisation of the demand draft/pay order.

**All Risks to the Buyer:** The items shall remain, in every aspect, at the risk of the buyer from the time of acceptance of his offer. IFCI will not undertake any liability whatsoever for the safe custody, protection or preservation after the sale has been confirmed. No complaint regarding the quality or description of the materials sold will be entertained once the bid has been accepted.

**Terms of Delivery:** No picking, choosing, sorting, welding, cutting or breaking of goods or materials sold will be permitted unless otherwise specified. The material will be delivered only to the successful bidder or his authorised representatives against the presentation of the buyer's identity proof.

**Default by Seller:** IFCI will not be, in any way, responsible for failure to deliver the material due to causes beyond his control such as a strike, lockout, cessation of work by labourers, shortened hours, act of God or other causes or other contingencies whatsoever. The buyer shall not be entitled to cancel the contract and the period of delivery shall automatically be extended proportionately.

**Default by Buyer:** Materials sold but not removed within the specified date will become the property of the seller and it will have the right to dispose of such goods in any manner as he deems fit without any notice.

**Conclusion of Delivery:** IFCI's responsibility ends after the consignment has been loaded and handed over to the representative of the purchasers. IFCI will not be party to any dispute that may arise after the loading has been completed. At the conclusion of the delivery of the lot or lots, pertaining to the item of scrap, any stock, left over should be verified by the Accounts Department with the book balance and any discrepancies adjusted.

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In case of **fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection and so on, of mechanical, electrical or ICT assets - e.g. Annual Maintenance Contracts or installation/ commissioning of Machinery and Plant and so on, it may be handled on the lines of Procurement of Goods.**



# Chapter - IV

# Procurement of

# Works

## 4.1 Definition and Applicability of Procurement of Works

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

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

## 4.2 Preparation of Estimates

### 4.2.1 Perspective Planning for Works

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

### 4.2.2 Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate

In case the work is to be executed under its own arrangement by Department/RO, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/ Features and Broad Specifications for specialised Equipment and Plants), Layout Plans etc, with the technical details/ documents should be captured. In case of execution of Work through Public Works Organisation (PWO) or the Public Sector Undertaking, PWO / PSU shall prepare such PPR or Rough Cost Estimate and submit it to the requiring Department/RO. Based on PPR and Rough Cost Estimate, the competent authority shall grant in Principle approval indicating approval of the concept and scope of the project at the rough cost assessed.

The preliminary project report shall provide the following details:

- i. Background of the work/ project justifying the need for the work
- ii. Details of scope of the project
- iii. Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate.
- iv. Availability of land - There should be a clear indication about the availability of land required

- for completion of whole project. The land shall be made available free of all encumbrances.
- v. Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
  - vi. Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance - This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority.
  - vii. Agency of Procurement - through direct procurement, outsourcing to PWO/ PSUs or otherwise.
  - viii. Rough Cost Estimate: User Department/RO may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of prevailing Plinth Area rates (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval.
  - ix. If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
  - x. Cash flow: This will show year-wise requirement.
  - xi. Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out.
  - xii. Appendices:
    - i) Requisition of the Department/RO;
    - ii) Concept Plans/ Preliminary Drawings;
    - iii) Reference to approval of Concept Plans/ Preliminary Drawings.
  - xiii. Any other relevant documents.
  - xiv. A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

#### **4.2.3 Acceptance of necessity and issue of in-Principle Approval**

Approval of competent financial authority for accepting the necessity of works and its Scope should be sought on the basis of PPR or Rough Cost Estimate and in Principle Approval of the Department/RO shall be made available for preparation of Detailed Project Report or Preliminary Estimates.

#### **4.2.4 Preparation of Detailed Project Report (DPR)/Preliminary Estimates (PE)**

The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition:

- i) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
- ii) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the

- DPR/PE;
- iii) Preliminary estimated cost - This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency (Public Works Organization or PSUs). Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered;
  - iv) Time of the completion - This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
  - v) Details of land required along with land plan schedule to implement timely land acquisition procedures;
  - vi) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
  - vii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;
  - viii) List of Approval of Statutory Bodies required;
  - ix) Annual plan allocation and cash flow;
  - x) Systems to be adopted for project monitoring;
  - xi) Works accounting system;
  - xii) Quality assurance system/ mechanism;
  - xiii) Bidding Systems - Single, two parts, pre-qualification, Post- qualification.

In case the work is being executed by the Department/RO themselves, DPR and PE will be prepared by the Department/RO itself. In case the Work is assigned to Public Works Organisation or the Public Sector Undertaking, that agency shall prepare the DPR and PE.

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

#### **4.2.5 Detailed Designs, Detailed Estimates and Technical Sanction**

Except where the work is to be undertaken in the EPC(Turnkey) mode, on receipt of sanction of the project, based on DPR or PE and assurance of funds, Department/RO shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of the schedule of rates maintained by CPWD or other Public Works Organizations - so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. In case the work is to be executed through a Public Works Organization or Public Sector Undertaking, preparation of detailed design/ estimates and technical sanction shall be done/ accorded by that organization. Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of

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

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

#### 4.2.6 Reference Documents used in preparation of Estimates

Reference Documents may be separate for different regions, various types of works - Building, Electrical and Mechanical.

- i. **Plinth Area Rates** which provide a quick but fairly accurate method of estimation of cost of buildings.
- ii. **Schedule of Rates** for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date (e.g. CPWD DSR - Delhi Schedule of Rates). Endeavour may be made to enlarge the base of the 'Schedule of Rates' published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by an internal committee constituted by the respective RO/Department.
- iii. **Analysis of Rates** by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed (e.g. CPWD Analysis of Rates)
- iv. **Specifications** describing inputs, processes, tests and mode of measurement for each kind of work commonly executed (e.g. CPWD Specifications)

### 4.3 Types of Contract, Bidding Systems and Modes of Procurement

#### 4.3.1 Agency for Procurement

##### **Directly by the Department/ROs**

Department/RO may directly execute repair works estimated to cost up to Rupees Thirty lakh after following due procedure 'laid down for Execution of Works' (Rule 139, 159 and 160 of GFR 2017).

##### **Public Works Organisations**

Department/RO may, at its discretion, assign repair works estimated to cost above Rupees thirty lakh and original works of any value to any Public Works Organisation (PWO) such as Central Public Works Department (CPWD), State Public Works Department, others Central Government

organisations authorised to carry out civil or electrical works.

### Public Works PSU/ Organisations

As an alternative, Department/RO may assign repair works estimated to cost above Rupees thirty lakh and original works of any value to:

- i) any Public Sector Undertaking set up by the Central or State Government to carry out civil or electrical works or
- ii) to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Urban Development (MoUD) for such purpose after evaluating their financial strength and technical competence.

### Procedure for Assigning Work to PWO or PSU/ Organisations

- i. For the assignment of work to PSUs, the Department/RO shall ensure competition among all such eligible PSUs/ organisations. This competition shall be essentially on the lump sum service charges to be claimed for execution of work. **The award of work to a PSU should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc) for procurement of consultancy will be applicable.** For selection methodology of consultant(s), Rule 192 to Rule 194 of GFR 2017 and Manual for Procurement of Consultancy and Other Services, 2017 may be referred.
- ii. A Memorandum of Understanding (MoU) may be drawn with the Public Works Organisation or the Public Sector Undertaking for proper execution of work. The MoU should spell out the obligations on the part of Public Works Organization or PSU regarding execution of works as per proper specifications and for maintaining proper quality and speed of execution of works. Different stages at which funds shall be released to the Public Works Organization should also be clearly spelt out. Such MoU would normally be for a specific standalone work but could also be for a Project consisting of a collection of related works. In case of MoU with Public work Organisations (PWOs) it could also be as a long-term framework MoU.

#### 4.3.2 Types of Contract

Different basis for linking payments to the performance of Contract (called types of contracts) - each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non-performance/ failure of the contract. Standard forms for all the types of contract mentioned below are available with Public Works Organizations like CPWD and the same may be used for calling the tenders. Each type of contract is described briefly in subsequent paras, and criteria are suggested for their adoption. Mostly used types of contracts are:

#### Lump sum (Fixed Price) Contract

- i) This form is used for work in which contractors are required to quote a lump sum fixed price

figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones.

- ii) There may be tendency for the Contractor to cut corners on quality and scope of work by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of work. The contract should include provision for evaluation of quality and scope of work and certificate for its acceptability may be recorded.
- iii) As time is not linked to the payment, there may be tendency for the Contractor to save on deployment of resources which may result in time-over-run. While the payments are not linked to time, the assignment should be monitored per month to ensure that the progress of work per month is in line with planned and estimated time-line.
- iv) Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal. Thus it is suitable for stereotype/ repetitive residential buildings or other structures for which standard drawings are normally available. It is also suitable for minor bridge works, chimneys, bins/silos, overhead tanks, etc. whether on Department's design or that of the contractor. In the latter case, the Department shall spell out the requirements in detail to enable the contractor to prepare his designs and drawings accordingly and submit them to IFCI for check and approval before construction.
- v) A Schedule of Rates (SOR) may still be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- vi) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In The concept of priced "activity schedules" may be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front-loading strictly guarded against.
- vii) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SOR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SOR as agreed upon while approving the tender or the rates.

### **Item rate (Unit Rate) Contract**

- i) For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by IFCI in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works.
- ii) The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually +/-15 (fifteen) percent per item] of the estimated quantity of the

initial BOQ.

- iii) This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties.
- iv) Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

### **Percentage Rate Contract**

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

### **Piece Work Contract**

Piece Work Contract is to be used mainly in following cases:

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

### **Engineering, Procurement and Construction (EPC) Contracts**

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- ii) Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. IFCI specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the



- construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor.
- iii) Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula, if any.
  - iv) The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. IFCI's engineer (also called owner's engineer) reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by IFCI on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule. The contractor is free to proceed with construction after the expiry of specified period in case no remarks/ clearances are given by IFCI.
  - v) The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to Contractor. If so provided in the Bid Document, IFCI is also liable to pay bonus (normally should not exceed ten percent) to the Contractor for completion of the project before the scheduled completion date, if so provided in the contract documents.
  - vi) Monitoring and supervision of construction are undertaken through IFCI's engineer, (a qualified firm that will be selected through a transparent process) acting as a single window for coordination with the contractor.
  - vii) Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of two years may be specified in the Agreement in order to provide additional comfort to IFCI.
  - viii) The selected IFCI's Engineer (Consultant) has to have good experience in design, project supervision and works management. The Department/RO must have an experienced team to super check the quality of supervision exercised by the owner's engineer, including quality of design review, site supervision, quality audits, etc. Periodic audits of Contractor's Engineer functioning are desirable in ensuring that Contractor's Engineer carries out his tasks professionally.
  - ix) In complex projects, a third party consultant be deployed for specific tasks like design audit, quality audits, safety audits, etc., to cross-check Consultant's Engineer's diligence in the process.
  - x) In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligation of the contractor needs to be built in.
  - xi) Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with

stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.

- xii) In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the PEC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.
- xiii) EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:
  - a) Limitation of liability for IFCI as well as contractor.
  - b) Deviation limits and procedure for change of scope.
  - c) Contract closing timelines and procedure to ensure timely closing of contract.
  - d) Performance parameters and liquidated damages for shortfall in performance
  - e) Risk matrix and responsibilities of the contractor and IFCI.
- xvi) In addition, a latent defect period beyond the defect liability period may be included to protect IFCI's interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xvii) To mitigate the risk involved in the methodology proposed by the contractor, the project executive authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.
- xviii) To ensure equality, regular inspection and quality checks must be carried out. The Project, executing authority shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

### 4.3.3 Bidding Systems

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

### 4.3.4 Modes of Tendering

Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance.

The various modes of procurement that can be used in public procurement of works are:

- i) Open Tender Enquiry (OTE); and

- ii) Limited Tender Enquiry - LTE (up to Rs. five lakh);
- iii) Single Tender Enquiry (STE) or selection by nomination.
- iv) Award of Work through Quotations.

### **Open Tender Enquiry (OTE)**

In OTE, an attempt is made to attract the widest possible competition by publishing the Notice Inviting Tender (NIT) simultaneously on the designated websites and in the press (newspapers and trade journals). This is the default mode of procurement and gives the best value for money, but the procedure is relatively complex and prolonged. ***The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.*** OTE procedures through e-procurement or through traditional tendering should be adopted for procurement values above Rs five lakh.

### **Terms and Conditions**

- a) Participation should not be restricted to only Bidders enlisted with IFCI. Bidders already enlisted are also free to participate. However, a requirement that successful un-enlisted Bidders may have to get enlisted with IFCI before contract is placed on them.
- b) IFCI should also publish all its advertised tender enquiries on its web site along with downloadable bidding documents. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders; and
- c) The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement.
- d) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should be available for download free of cost up to the date of opening of tenders. The organization should also post the complete tender document in the web site and permit prospective tenderers to make use of the document downloaded from the web site. If the tender document is a priced one, there should be clear instructions for the tenderers in the document (which has been downloaded) to pay the amount by demand draft etc. along with the tender, prepared in the downloaded document.
- e) IFCI shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.

### **Limited Tender Enquiry (LTE)**

LTE is a restricted competition procurement, where a preselected list of bidders (enlisted with IFCI along with those enlisted with other Public Works Organisations/ Works PSUs) is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. ***This mode provides a short and simple procedure but may not provide as good a VfM as in case of open tendering - still a good balance for procurements below a threshold.*** LTE procedures should be default mode of procurement when the estimated value of procurement is less than Rs. five lakh or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature.

## ***Terms and Conditions***

- a) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/ courier/ e-mail to firms which are enlisted bidders/ contractors. Further, IFCI should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP). Apart from CPPP, the organisations should publish the tender enquiries on IFCI's website. The unsolicited bids, if any should not be accepted; however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
- 1) Inadequate Competition
  - 2) Non-availability of suitable quotations from enlisted bidders
  - 3) Urgent demand and capacity/ capability of the firm offering the unsolicited being known, etc.
- b) A simplified Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved bidders/ contractors are available, LTE may be sent to the available approved bidders/ contractors with approval of the CA, duly recording the reasons. The requirement should then be marked for development of more sources by the Bidder Enlistment section.

## **Single Tender Enquiry (STE) or Selection by Nomination**

The selection by direct negotiation/ nomination is called a single tender. This mode may be shortest but since it may provide lesser VFM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions:

- a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by IFCI nor the result of dilatory conduct on its part.
- b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the **incremental work should not be more than 25 (twenty-five) percent of the original contract value;**
- c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
- d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
- e) The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.
- f) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single source selection in the context of the overall interest of IFCI.

## ***Terms and Conditions***

- a) The reasons for a STE and selection of a particular firm must be recorded and approved by the CA.
- b) Ensure fairness and equity and have a procedure in place to ensure that the prices are reasonable and consistent with market rates for work of a similar nature; and the required work is not split into smaller sized procurements.
- c) All works/purchase/ consultancy contracts awarded (greater than Rs 25, 000/-) on nomination basis should be brought to the notice of The Board of Directors for information.

The report relating to such awards on nomination basis shall be submitted to the Board of Directors every quarter.

### **Award of Work through Quotations**

- a) Use of quotations up to Rs Five lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- b) Procurement entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.
- c) Procurement entity shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the goods themselves, such as, transportation and insurance charges, duties and taxes are to be included in the price.
- d) Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
- e) Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

## **4.4 Preparing Bid Documents, Publication, Receipt and Opening of Bids**

### **4.4.1 Bid Documents**

All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence.

In case of a limited tender, instead of a full set of RFP, only a simplified tender form may be used as the tender document. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.

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

- i) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed.;
- ii) Limitation or preference for participation by bidders in terms of the government policies in accordance with Public Procurement (Preference to Make in India), Order 2017 dated

- 28.05.2018 issued by Department of Industrial Policy & Promotion etc.);
- iii) The qualification criteria should take care of the contractor's past performance, experience, technical competence, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on;
  - iv) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
  - v) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
  - vi) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. Names and contact details of IEM in case of Integrity Pact;
  - vii) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/ highest as the case may be) bidder should be clearly indicated in the bidding documents;
  - viii) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and
  - ix) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws.
  - x) The names, designations and addresses of one or more officers or employees of IFCI who are authorized to communicate directly with and to receive communications directly from contractors or contractors in connection with the procurement proceedings.
  - xi) Any formalities that will be required once a tender has been accepted for procurement contract to enter into force.
  - xii) **Tender Documents**
    - a. The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of IFCI and the contractor timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & solid investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document.
    - b. In tenders containing Conditions of Contract (CC) , additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The CCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
    - c. Identification of milestones may be done in an optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.
    - d. Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.
    - e. IFCI may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.

- f. Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- g. Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.
- h. Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- i. Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.
- j. Pre-bid conference may be conducted for large value tenders. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of IFCI and/ or through newspaper publication.

#### 4.4.2. Preparation of Bid Documents

The bid documents must be based on relevant Standard Request for Proposal (RFP) Document for the Type of Contract (Lump Sum, Item Rate Etc); Estimated Value range, Bidding System (Single Envelope/ Two Envelope/ PQB) etc. RFP for e-procurement would be slightly different from the traditional RFP . To ensure uniformity, the standard provisions in most sections of the RFP are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Appendix to Instructions to Bidders (ITB-Appendix 2) or Special Conditions of Contract (these variable sections may have different nomenclatures in some organisations). Normally, if the organisation does not have its own RFP, it may follow those of other Public Works Organisation like CPWD. Before floating the tender the Bid Document should be got approved by the competent authority.

#### **Special Conditions of Contract (SCC):**

Any additions, deletions, or variations to the Condition of Contract (CC) felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project-specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:

- a) Where the wording in CC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
- b) Where the wording in CC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
- c) Where the type, circumstances or locality of the works requires additional clauses or sub-clauses; and
- d) Where the laws of the country, or exceptional circumstances, necessitate alterations in CC. Such alterations are affected by stating in SCC that a particular clause, or part of a clause in CC, is deleted and giving the substitute clause or part, as applicable.

#### **Bid Validity**

A bid shall remain valid for the period mentioned in the RFP [normally 90 (ninety) days for OTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

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

#### **4.4.3 Publication of Bid Documents**

It is mandatory to publish tender enquiries, corrigenda thereon and details of bid awards on the Central Public Procurement Portal (CPPP) (in case of Open Tenders). The advertised tender enquiries should also be published in our website. In exceptional circumstances, advertisement in newspapers may be issued if deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded. Individual cases where confidentiality is required, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved as per DoP. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders. To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the "Notice Inviting Tender" (NIT) through email/ SMSs/ letters. In e-procurement, the website may be programmed to generate these alerts automatically. In case of procurement through a limited tender, the NIT may be uploaded on CPPP Portal and IFCI's website with a note saying:

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

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

For procurement of highly technological and complex works, tender submission dates may be extended by the Department/RO in order to reply queries in the pre-bid meetings or any other justifiable reason.

#### **4.4.4 Issue/ Availability and Cost of tender documents**

The sale/ availability for downloading of tender documents against NIT should not be restricted. Tender documents should preferably be sold/ available for download up to the date of opening of tenders. Tender Document shall also post on IFCI's web site and on CPPP to enable prospective tenderers to make use of the document downloaded from the web site. The advertisement for invitation of tenders should give complete web-address from where bid documents can be



downloaded.

#### 4.4.5 Eligibility and Qualifications of Bidders

##### Eligibility of Bidders

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

##### Qualification of Bidders

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

##### Pre-qualification Bidding (PQB)

- i) In high value contracts or complex technical requirements where capability of source of supply is crucial (for example in construction of complex bridges), for the successful performance of the contract, besides considering techno commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their

higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding - please refer para 3.3.10 above). In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Prequalification Criterion (PQC).

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

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

#### **a) General Construction Experience: Annual Turnover**

The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50(fifty) percent of which is from Engineering (Civil/ Electrical/ Mechanical as relevant to the work being procured) construction works) carried out in any of the year over a stated period (normally five to seven years, ending 31<sup>st</sup> March of previous year), calculated by applying an appropriate multiplier to the projected annual construction expenditure on the subject contract. The multiplier of 2 may be used, but for very large contracts

should not be less than 1.5.

## **b) Particular Construction Experience and Key Production Rates**

### **The applicant should have:**

1. successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following: -
  - 1.1 Three similar completed works costing not less than the amount equal to 40(forty) percent of the estimated cost; or
  - 1.2 Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or
  - 1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and
2. Definition of "similar work" should be clearly defined.
  - 2.1 The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the organizations may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.)
3. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.  
The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract (Note: Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant's share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening.  
Certificate for 'substantial completion' of project/work/asset should contain two parts. Part - I shall contain 'financial value of work done' and part-II shall contain 'certificate of functional completion of project/work/asset'

## **c) Financial Capabilities**

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

#### **d) Personnel Capabilities**

The applicant's key personnel, as listed in the pre-qualification document, should meet the requirements of qualification and experience specified. The pre-qualification criteria should, refer to a limited number of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (for example, superintendents specialised in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability should be based on:

1. A minimum qualification related to the work, if considered desirable;
2. A minimum number of years of experience in a similar position; and
3. A minimum number of years of experience and/ or number of comparable projects carried out in a specified number of preceding years.

#### **e) Equipment Capabilities**

The applicant should own, or have assured access (through hire, lease, purchase agreement, other commercial means) to the specified key items of equipment, in full working order, and satisfy that, based on known commitments; it will be available for timely use on the proposed contract. The pass-fail criteria adopted should be limited only to those bulky or specialised items that are critical for the type of project to be implemented (say heavy lift cranes and piling barges, dredgers, asphalt mixing plants), and so on. Contractors may not own the specialised items of equipment, and may rely on specialist sub-contractors or equipment-hire firms.

#### **(f) Available Bid Capacity**

The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:

**Available bid capacity = A x M x N -B, where**

A = Maximum value of engineering (Civil/ Electrical/ Mechanical as relevant to work being procured) works executed in any one year during the last five years (updated at the current price level), taking into account the completed as well as works in progress.

M = Multiplier Factor (usually 1.5)

N = Number of years prescribed for completion of the work in question.

B = Value (updated at the current price level) of the existing commitments and ongoing works to be completed in the next 'N' years.

#### **(g) Pre-qualification of JV**

JV members are "jointly and severally responsible and liable" in a contract. For pre-qualification, the JV should fulfil the criteria specified in the pre-qualification document. The attributes to be evaluated will be the same as for individual contractors; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:

1. Qualifying factors to be met collectively: (i) annual turnover from construction; (ii) particular construction experience and key production rates; (iii) construction cash flow for the subject

- contract; (iv) personnel capabilities; and (v) equipment capabilities;
2. Qualifying factors for lead partner: (i) Annual Turnover from Construction; (ii) particular construction experience; (iii) financial capability to meet cash flow requirement of subject contract -not less than of 50 (fifty) per cent of the respective limits prescribed in case of individual contractors may be accepted; (iv) adequate sources to meet financial commitments on other contracts; (v) financial soundness;
  3. Qualifying factors for other partner: Same as for lead partner except that for the factors specified in (2) (iii) above, a lower limit of 25 (twenty-five) per cent may be accepted instead of 50 (fifty) per cent.

## **(h) Disqualification**

Even if an applicant meets the eligibility criteria (Please refer Para 4.5 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

1. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;
2. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non-performance, such as the most experienced partner (major partner) of JV pulling out;
3. On account of currency of debarment by any Government agency.

### **4.4.6 Clarification of Tender Documents**

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

### **4.4.7 Amendment of Tender Documents**

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

#### 4.4.8 Pre-bid Conference

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

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

#### 4.4.9 Submission of Bids by Bidders

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

**Part 1 Technical Bid:** The technical bid shall be hardbound (in other than e- Procurement) and all pages serially numbered. Hardbound implies such binding between two covers through stitching or otherwise whereby it may not be possible to replace any paper without disturbing the document. In e-Procurement, the submission would be online.

- i) Bid security for an amount and in form as specified in ITB;
- ii) Power of attorney;
- iii) Qualification information and supporting documents (if prequalification has been done, original qualification will be updated);
- iv) Evidence of access to a revolving line of credit;
- v) Undertaking for making available the required key equipment as specified;
- vi) Undertaking for making available the required key personnel as specified;
- vii) Annual audited turnover;
- viii) Current contract commitments/ works in progress;
- ix) Financial data;
- x) Additional information regarding litigation, debarment, arbitration, and so on;
- xi) Joint Venture (JV) agreement (or a letter of intent to create a JV in case of award of Contract) in case the bidder is a JV;

- xii) Proposed methodology and programme for execution of work duly supported by equipment planning and QA procedures proposed to be adopted by the bidder; and
- xiii) Affidavit concerning Submission of Bid and abiding by Bid Conditions.

## **Part II Financial Bid**

- i) Form of bid - duly filled in and signed on each page; and
- ii) Priced BOQ - duly filled in and signed on each page. Each part will be separately sealed and marked as per instructions. In other than e-Procurement tenders, all the quoted rates and the amount in the BOQ shall be laminated.

## **Withdrawal, Substitution and Modification of Tenders**

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

### **4.4.10 Receipt and Opening of Bids**

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

On the due date and appointed time, as mentioned in the bid document, the Bid Opening Committee (BOC) will open the bids in the presence of the intending bidders or their representative. The bidder's name, the bid prices and conditional and unconditional discount, if any will be announced by IFCI during opening of bids. A record of opening of bids will be maintained, including signatures of bidders present.

In e-procurement, all tenders uploaded by tenderers are received, safeguarded and opened online on the portal. In offline tenders, receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

- i) IFCI shall maintain tender boxes for receiving the bids at suitable locations which would facilitate security and easy access to bidders. If required, Tender boxes should be separate for each day of the week of tender opening and should be sealed by the Bid Opening Committee (BOC) of the day. The tender box shall have two locks. Key of one lock will be with the head of the office and the other key with the official nominated by him;
- ii) Bids received by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected; and
- iii) For bulky/ oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time

- of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents.
- iv) The authorised representatives of bidders, who intend to attend the tender opening in OTE/ GTE, are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid opening activities should be carried out demonstrably before such a gathering;
  - v) At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/ altering/ withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and un-tampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered;
  - vi) After opening, every tender shall be numbered serially (say 3/14 - if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC. As the bids are to be submitted in hardbound form, signing of covering letters and index page by all the committee members is sufficient;
  - vii) Erasure/ cutting/ overwriting/ use of whitener/ columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/ amount is written only in figures, the BOC should write them in words. All rebates/ discounts should be similarly circled, numbered and signed. In the absence of any alteration/ overwriting/ whitener/ blanks, the remark "no corrections noted" should be written. Similarly, the absence of discounts should be marked with "no discounts noted;"
  - viii) The BOC is to announce the salient features of the tenders such as description and specification of the goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
  - ix) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated purchase officer and an acknowledgement obtained for him.



## 4.5 Evaluation of Bids and Award of Work

### 4.5.1 Evaluation of Bids

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

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 IFCI. 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.

### 4.5.2 Preparation of Comparative Statement and Briefing

Except in cases of LTE, IFCI 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 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.

### 4.5.3 Preliminary Examination

- 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 IFCI on

any matter related to the bid, except on request and prior written permission.

- iii) Any effort by the bidder to influence IFCI 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).

**Unresponsive Tender:** 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 an enlisted contractor but the tenderer is not an 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 IFCI's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

#### 4.5.4 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.

#### 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:** IFCI 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 IFCI'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 IFCI.
- 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-a-vis* other tenders and IFCI.
- 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-a-vis* other tenders and IFCI.
- iv) **Considering Minor Deviations: Bids which are not materially deviated, may be considered substantially responsive.** Court has consistently taken a view that Organizations are 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, IFCI'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 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.

#### **4.5.5 Deliberations by the Tender Committee**

Deliberations by the Tender Committee should be in the sequence of L1, L2, etc.

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 IFCI within three working days.

#### **4.5.6 Award of Work**

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 fool proof 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. 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 up to Rupees ten lakh, where tender documents include the Conditions of Contract (CC), 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.

### **4.6 Breach of Contract, Remedies and Termination**

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 supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects IFCI seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. . As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately.

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If the other services **involve construction, fabrication, repair, maintenance, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, of Civil assets, then it should be handled on the lines of Procurement of Works.**

# **Chapter - V**

# **Procurement of**

# **Consultancy and**

# **Other Services**

## 5.1 Definition and Applicability of Procurement of Consultancy/ Other Services

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

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

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

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

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

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

It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, **if the intellectual and advisory part**

**of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode.**

## 5.2 Procurement of Consultancy

### 5.2.1 Types of Contract/Systems of Selection of consultants/ service providers

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

Mostly used types of contracts are:

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

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

#### 5.2.1.1 Lump Sum (Firm Fixed Price) Contract

The lump sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; IFCI shall use this form of contract. Consultant's proposal is deemed to include all prices - no arithmetical correction or price adjustments are allowed during evaluation. Lump sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/ milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. This type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth.

#### 5.2.1.2 Time-Based (Retainer-ship) Contract

In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who in consultancy contracts are normally named, but not so in other services) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant/ service provider are retained for a pre-decided period. The rates for staff include salary, social costs,



overhead, fee (or profit), and, where appropriate, special allowances. This type of contract is appropriate when Lump sum contract is not feasible due to difficulties in defining the scope and the length of services, either because the inputs required for attaining the objectives of the assignment is difficult to assess or because the services are tied up to activities by others for which the completion period may vary. Because of risks and mitigations mentioned below, this type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments etc.

### **5.2.1.3 Percentage (Success/ contingency Fee) Contract**

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

These contracts are commonly used for appropriate architectural services, procurement and inspection agents.

### **5.2.1.4 Retainer and Success (Contingency) Fee Contract**

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

Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organisational restructuring/ change.

### **5.2.1.5 Indefinite Delivery Contract (Price Agreement)**

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

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

### 5.2.2 Selection of Individual consultants/ service providers

Individual consultants/ service providers are normally employed on assignments for which

- i) Teams of personnel is not required;
- ii) No additional outside professional support is required, and
- iii) The experience and qualifications of the individual are the paramount requirement.

The procedures for selecting individual consultants/ service providers are similar to, but much simpler than, those for selecting teams of consultants/ service providers from a firm. Process of selection of Individual consultants/ service providers entails:

- i) Preparing a Consultancy and other services package including the Terms of Reference (ToR), time frame, number of person-months, budget, EoI Short-listing criteria and getting it approved by the Competent Authority;
- ii) **Advertising:** Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on Government E- Market (GeM). An organisation having its own website should also publish all its advertised tender enquiries on the website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- iii) **Method of Selection:** They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by IFCI. Candidates who are already employed with IFCI shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organisation. Selection will be carried out by the CEC which will award marks for educational qualifications and experience and select the most suitable candidate for the assignment. The CEC may also interview candidates and award marks for their performance in the interview and recommend the remuneration to be paid.
- iv) **Direct Negotiation:** Individual consultants/ service providers may be selected on a direct negotiation basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant/ service provider has carried out and for which the consultant/ service provider was selected competitively; (b) emergency situations resulting from natural disasters; and (c) when the individual is the only or one of the few consultant/ service provider qualified for the assignment. Individual consultants/ service providers may be (among others) independent consultants/ service providers; consultants/ service providers recruited from firms; or consultants/ service providers recruited from academic, government, or international agencies (d) when the matter is urgent/ time-sensitive and work, if delayed, could lead to financial loss to the organization or withdrawal or cancellation of proposal or in advisory assignments where stakes are high (in monetary terms or reputation terms or timeline terms), especially when Government is the client. (e) when the estimated cost & efforts of tendering exceed costs of award on direct negotiation basis, especially in contracts where value of contract is less than INR 3 lakhs.

- v) **Staff or Associates of Consultancy/ service provider Firms:** If the candidate is permanent staff or associates of a Consultancy firm the conflict-of-interest provisions shall apply to the parent firm.

### 5.2.3 Selection of Specialized Agencies/ Institutions

From time to time, IFCI may need to recruit a specialized agency or institution to undertake a specific task for which it is particularly well suited. Such agencies may be Government/ Semi-Government Agencies, Universities or Professional Institutions.

In some cases, the agency or institution has access to special expertise or special backup and support facilities that make it worthwhile considering recruitment on single source selection (SSS) basis. In such cases, there must be full justification that the use of SSS is in the best interests of IFCI.

Individual consultants/ service providers recruited from agencies and institutions may be selected in the same way as any other independent consultants/ service providers.

### 5.2.4 Selection of Nongovernmental Organizations (NGO)

In this case, Quality and Cost Based Selection (QCBS) should be followed, and the evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:

- i) History of work with grassroots communities and evidence of satisfactory performance;
- ii) Familiarity with participatory development approaches and low-cost technologies;
- iii) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;
- iv) Committed leadership and adequate management;
- v) Capacity to co-opt beneficiary participation

IFCI may select NGOs using SSS, provided the approvals and procedures laid down for the same are followed. For example, SSS may be adopted to hire a local NGO for a very small assignment in a remote area where only one NGO is available, and competition is impractical.

### 5.2.5 Procurement Agents

Procurement agents (PAs) may be hired by IFCI to assist in carrying out procurement, to provide advice, or a combination of both. When PAs are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are paid a percentage (either fixed or inversely proportional) of the value of the procurements handled or a combination of a percentage and a fixed fee. In such cases, they are selected under QCBS, with cost being given a weight of up to 50 (fifty) percent. In such cases, it is essential to ensure that the quality threshold in the evaluation is set sufficiently high. When PAs provide only advisory services for procurement or act as “agents” for a whole project, they are usually paid based on the staff-months of effort provided, and they shall be selected following the appropriate procedures for other Consultancy assignments using QCBS and time-based contracts, as specified for other Consultancy assignments.

### 5.2.6 Inspection Agents

IFCI may hire inspection agents to inspect and certify goods before shipment or on arrival in India. The inspection by such agents usually covers the quality and quantity of the goods concerned and the reasonableness of the price. Inspection agents are selected using QCBS, with cost being allocated a weight of up to 50 (fifty) percent. Payment is usually based on a percentage of the

value of goods inspected and certified.

### 5.2.7 Financial Advisors

IFCI may hire financial institutions to implement two main types of assignment:

- i) in the preparation of studies and financial Consultancy; or
- ii) As advisers on financial restructuring, M&A or demerger etc.

In the first case, the advisers can be selected under any of the methods described in this chapter (that is, whichever is considered most suitable, depending on the scope of work of the assignment). In the second case, QCBS shall be adopted, whereby the RfP specifies technical evaluation criteria similar to those relevant to standard Consultancy assignments. The financial proposal would include two distinct forms of remuneration:

- i) a lump-sum retainer fee to reimburse the consultant/ service providers for services made available; and
- ii) A success fee, which is either fixed or preferably expressed as a percentage of the value of the privatization transaction.

Depending on the type of activity and the circumstances of IFCI, the RFP specifies the relative weights assigned in the financial evaluation to the retainer and to the success fee, respectively. In some cases, IFCI offers a fixed retainer fee, and the consultant/ service providers must compete only on the success fee as a percentage of the value of the privatization transaction. For QCBS (notably for large contracts), cost may be given a weight higher than recommended for standard assignments (such as 30 (thirty) percent), or the selection may be based on LCS selection. The RFP shall specify clearly how proposals will be presented and how they will be compared. Success fees are most appropriate when it is relatively easy to measure results in meeting IFCI's objective (successful sale of assets) and when the success is at least partly related to the efforts of the consultant/ service providers involved.

### 5.2.8 Auditors

Auditors typically carry out auditing tasks under well defined Terms of Reference (ToR) and professional standards. They shall be selected according to LCS system, with cost as a selection factor.

### 5.2.9 Systems of Selection of service providers

Since the quality and scope of a consultancy assignment are not tangibly identifiable and consistently measurable, the technical and financial capability of consultants becomes an important though indirect determinant for quality and scope of performance. In such a situation value for money is achieved by encouraging wide and open competition among equally competent consultant. Thus, selection of consultants is normally done in a **two stage process**. In the **first stage, likely capable sources are shortlisted, if need be through an 'Expression of Interest' (Eoi)** through advertisement. On the basis of responses received, consultants meeting the relevant qualification and experience requirements for the given assignment are shortlisted for further consideration. The shortlist should include a sufficient number, not fewer than three (3) and not more than eight (8) eligible firms. **In the second stage, the shortlisted consultants are invited to submit their technical and financial (RfP)** proposals generally in separate sealed envelopes. Evaluation of the technical proposal is carried out by evaluators without access to the financial part of the proposal. Financial proposals are opened after evaluation of quality.

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

The nomenclature of various selection methods below is in line with generally prevalent nomenclature:

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

Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis as in procurement of Goods/ works for technically responsive offers. Under very special circumstances Single Source Selection may also be used. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) where use of QCBS system appears to be called for, it may be better handled as a consultancy contract.

It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid<sup>17</sup>. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

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

#### **5.2.9.1 Price based System - Least Cost Selection (LCS)**

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

minimum fail/pass benchmark of technical evaluation may be prescribed (i.e. must have completed at least two similar assignments; must have a turnover of at least Rs 10 (Rupees Ten) Crore etc). Any bidder that passes these benchmarks is declared as technically qualified for opening of their financial bids. The technical proposals are opened first and evaluated and the offers who are qualifying as per these technical evaluation criteria will only be considered as technically responsive, and the rest would be considered technically nonresponsive and would be dropped from the list. Financial proposals are then opened for only eligible and responsive offers (Financial bids of other unresponsive bidders are returned unopened) and ranked. L-1 offer out of the responsive offers is selected on price criteria alone without giving any additional weightage to marks/ ranking of Technical proposal. This system of selection is roughly the same as the price based selection of L-1 offer (among the technically responsive offers) in procurement of Goods/ Works.

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

#### **5.2.9.2 Quality and Cost Based Selection (QCBS)**

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

### 5.2.9.3 Direct Selection: Single Source Selection (SSS)

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

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

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

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

All works/purchase/ consultancy contracts awarded (greater than Rs 25,000/-) on nomination basis should be brought to the notice of following authorities for information

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

### 5.2.9.4 Fixed Budget - based Selection (FBS) for consultancy services

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

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

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

methods:

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

## 5.3 Preparing for Procurement of Consultancy Services

### 5.3.1 Preparation of Terms of Reference (ToR)

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

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

- i) IFCI's organisation background and Project background;
- ii) Purpose and Service Outcomes Statement of the assignment;
- iii) Detailed scope of work Statement including schedule for completing the assignment;
- iv) Expected requirement of key professionals and kind of expertise;
- v) Capacity-building programme and transfer of knowledge, if any;
- vi) Deliverables - List of reports (or documents, data, maps, surveys, designs, drawings), schedule of deliveries, and period of performance;
- vii) Background material, Data, reports, records of previous surveys, and so on, available and to be provided to the consultant;
- viii) Facilities such as local conveyance, office space, office machines, secretarial assistance, utilities, local services, etc., which would be provided to the consultant by IFCI;
- ix) Institutional and organisational arrangement; and
- x) Procedure for review of the work of consultant after award of contract

It should cover following aspects:

#### i) Detailed Scope of Work



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

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

Except in very complex Consultancies, it is desirable to not to distinguish the tasks of individual experts but instead to prepare a longer and more detailed description of what the Consultancy team, as a whole, will provide without splitting up tasks. These are generally known as "activity based" ToR as opposed to "position-based" ToR. The ToR would list a range of tasks without regard to who will have the responsibility to undertake them. In most of the cases, where the number of experts is small, the work to be done is not clearly defined, and a degree of flexibility is required - this is acceptable. In Consultancy services, Key professionals are usually named and their credentials carry weightage in technical evaluation.

## iii) **Deliverables and Reports Requirements**

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

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

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

- c) **Interim Reports:** If the assignment is phased, interim reports are required to inform IFCI of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, IFCI should discuss the draft interim reports with consultants in the field. IFCI should not take more than 15 (fifteen) days to review and approve draft interim reports.
- d) **Final Report:** The final report is due at the completion of the assignment. IFCI and consultants should discuss the report while it is still in draft form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from IFCI, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.

**iv)** Background material, records of previous surveys etc. available and to be provided to the consultant. This would vary from project to project, but transparency demands that such information should be transparently and equitably shared with all prospective bidders.

**v)** Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the consultant. This aspect has a great bearing on the cost that will be quoted by the bidders. This can have implications in vitiating the selection process either way - a facility to be provided may not get declared or a declared facility may not be provided ultimately. So, great care and reality check is necessary, while preparing this statement.

### 5.3.2 Estimating Costs, Setting the Budget, and Seeking Approval

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

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

- iv) **Staff Costs:** The estimate of staff cost is based on an estimate of the personnel time (staff-months or staff-hours) required for carrying out the assignment taking into account the time required by each expert, his or her billing rate, and the related direct cost component. In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. It is useful to prepare a bar chart indicating the duration of each main activity (work schedule) and time to be spent by different members of the consultancy team (staffing schedule) distinguishing tasks to be carried out by foreign and local consultants. Due consideration should be given to the expected breakdown of a consultant's time in the home office and client's countries and away from home office allowance.
- v) **Logistic Costs:** Number of trips required should be estimated as required to carry out various activities. Travel costs may be included for city travel, National and International travel and stay.
- vi) **Physical Inputs Costs:** Assessment of such costs would depend on the technical requirements of equipment.
- vii) **Miscellaneous costs:** Support services may be taken as a percentage of staff costs. Contingencies and Profit elements are usually taken as a percentage of the total cost of the Consultancy. To this would be added the taxes and duties likely to be incurred by the consultants.

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

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

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

#### 5.2.4 Finalizing and Approval of the ToR

The scope of the work described in the ToR shall be compatible with the available budget. The most important step is to determine whether all tasks required to achieve the desired output have been included in the ToR. The next step is to determine whether adequate budget has been allocated to implement the ToR as designed.

#### 5.2.5 Developing a Procurement Plan

The Consultancy may be part of a larger project/ works in which there be other components of work, Goods or services. Once a project or a program is identified, IFCI needs to develop synchronised procurement plan for all the various components of the project/programme. This will also require planning of the sequence and contents of the different components including consultancy, adoption of the most appropriate method of selection and type of contract and

ensuring that consultant selection is initiated and completed to meet the overall requirements of project implementation.

## 5.4 Shortlisting Stage in Procurement of Consultancy Services

### 5.4.1 Shortlisting of qualified consultants – Expression of Interest

Due to inherent complexities of evaluation of physically non-measurable scope and quality standards of consultancy proposals, it is too time consuming and expensive for IFCI to invite (as well for the Consultancy firms to prepare) and evaluate proposals from all consultants who want to compete. Therefore, instead of publicly inviting all interested bidders to present their bids; the consultant selection process is based on obtaining limited number of proposals from a short list of qualified firms that, in IFCI's view of experience, are capable and can be trusted to deliver the required services at the desired level of quality.

In Procurement of Consultancy, these considerations can be best addressed through unrestricted competition among qualified shortlisted firms or individuals in which selection is based on the quality of the proposal and, where appropriate, on the cost of services to be provided. **Hence Procurement of Consultancy needs to be done in a two stage process.** In the first stage of procurement, the qualified firms are shortlisted transparently. In the second stage Request for Proposals (RFP) containing Technical and Financial Bids is invited from such shortlisted bidders to select the winning bidder. Care should be taken to avoid formation of unreasonable qualification criteria prior to shortlisting of consultants that may lead to restricted participation.

Unlike Procurement of Consultancy Services, procurement of other (non-consultancy) Services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage (RFP) Process. In procurements above Rs 10 (Rupees Ten) Lakhs, it should normally be an advertised RFP. For procurement below Rs 10 (Rupees Ten) Lakhs, RFP can be issued to a selected shortlist of likely service providers.

For procurement above Rs 25 Lakh, shortlisting is done in an openly advertised competitive shortlisting process called Expression of Interest (Eoi), giving equal opportunity to all interested bidders to be considered for shortlisting. Under Eoi the "Request for Expression of Interest" (REoi) is advertised on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in), on Government E-Market (GeM) and IFCI's website. The advertisement must include, among other things, the last date of submission of Eoi, how to get/ download copy of the Eoi document including ToR, contact information of IFCI with the name of contact person, and so on. In case it is felt that likely consultants may not be available in India, the Eoi process may be done on Global Tender Enquiry (GTE) process, by sending Eoi notice to foreign embassies in India and Indian embassies in relevant countries.

In procurements of consultancy services below Rs 25 Lakh, shortlisting is done without a formal published Expression of Interest (Eoi), akin to a Limited Tender Enquiry (LTE) process. To start with, the preparation of a long list of potential consultants/ service providers may be done on the basis of formal or informal enquiries from other PSUs or Organisations involved in similar activities, Chambers of Commerce & Industry, Association of consultancy firms etc. IFCI should scrutinise the preliminary long list of likely contractors as identified above and shortlist the prima facie eligible

and capable contractors from the long list. The number of consultants in this moderated long-list should not be less than three. In case sufficient consultants cannot be located, then the responses may be called from lesser number of consultants, but not less than three in any case, after taking CA's approval. To smoothen this shortlisting of consultants for projects below Rs 25 Lakh, Departments/ROs, may consider preparation of a Panel of qualified consultants, after evaluation of their credentials, on the lines of registration of vendors in procurement of goods. If the complexity of the project so justifies, a formal Eol may be advertised as in above, even for procurements below Rs 25 Lakh, with the approval of CA.

Empanelment of contractors: IFCI may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity.

#### **5.4.2 Eol document shall contain following sections:**

##### **a) Letter of Invitation**

It shall include a copy of the advertisement whereby consultants are invited to submit their Eol.

The Letter of Invitation (Lol) shall state the intention of IFCI to enter into a contract for the provision of consultancy services, date, time, and address for submission of proposals.

##### **ii) Instructions to the consultants**

It may include instructions regarding nature of job; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;

The Instructions to consultants (ITC) shall consist of two parts: (1) standard information; and (2) assignment specific information. The assignment specific information is added through the data sheet. The ITC contains all necessary information that would help the consultants prepare responsive proposals and shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on.

Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection) but shall indicate the expected input of key professionals (staff time).

##### **iii) Description of Services - Brief Purpose and Scope of Work**

This may include brief purpose/objective statement; Service Outcomes Statement; broad scope of work including Timeframes; and expected deliverables of the assignment. This may also

include the place of execution of the assignment. The request for EoI shall not include the assignment ToR.

#### **iv) Qualification Criteria**

This may clearly lay down the qualification criteria which shall be applied by IFCI for short listing the consultants. The EoI should ask for sufficient information so that IFCI may evaluate the consultant's capabilities and eligibility to undertake the assignment. Information should include: (a) core business and years in business; (b) qualifications in the field of the assignment; (c) technical and managerial organisation of the firm; and (d) general qualifications and number of key staff. In addition, the consultants should indicate information relating to their eligibility and any conflict of interest that they know may impact objective performance and impartial advice for their services. Consultants should not be asked about their approach to the services or to submit any curricula vitae of key personnel, because these documents will be dealt with in the RfP. No legal documents such as certificates of incorporation of the firm, powers of attorney, financial statements, or translations of standard brochures should be requested. Given the often-large number of submissions, the advertisement should stress the importance of brevity of the information to be sent.

#### **5.4.3 Short List of consultants**

IFCI shall evaluate the consultants for shortlisting, inter-alia, based on their past experience of handing similar types of projects, strength of their man power and financial strength of the firm. For example, it is important to find out if the firm: (i) is a small specialised firm or a large firm with access to a pool of expertise; (ii) has been in business for an extended period and has a track record in the field of assignment and in the region; and (iii) has appropriate certification in in-house quality control as relevant to the task and has an ethics code in place.

It is important for IFCI to hire consultants who have a reputation for integrity and impartiality rooted in independence from third parties. It is seen that the process of shortlisting is one of the most difficult and time-consuming tasks in the selection process of a consultant. This could be eased by writing a clear Description of Service (objectives and Scope) and shortlisting criteria.

Finally, if the same firm is considered for concurrent assignments (for example, a construction supervision consultant for different stretches/packages of rehabilitation/reconstruction of a road contract), IFCI shall assess the firm's overall capacity to perform multiple contracts before including it in more than one short list. However this needs to be pre-declared in the EoI documents.

The short list of firms is required for the selection of consultancy services in a competitive process with a minimum of three and generally not more than eight.

IFCI may assign scores to the response of each consultant based on weightages assigned to each of the criteria in the EoI. Each criterion may be sub-divided into sub-criteria, if called for. The criteria and their weightage may be changed as per the need of IFCI).

IFCI shall short list all the consultants who secure the minimum required marks [normally 75% (seventy five percent)]. The minimum qualifying requirement shall be specified in the EoI document.

In EoI, simplified evaluation criteria can also be used. A fail-pass, minimum benchmark in each

criteria/ sub-criteria can be specified e.g. Must have past experience of at least two similar projects; key professionals must have at least seven years' experience and must have Master's Qualification in relevant field; Firm must have a turnover of at least Rs.10 (Rupees Ten) Crores and so on. Any firm which passes these benchmarks is declared as qualified.

However, this exercise of scoring is not merely for disqualification of firms below a threshold, but to establish the relative strengths and weaknesses of the applicants, in order to arrive at a robust short list of qualified consultants who have the required experience and qualifications to deliver the required services at the desired level of quality.

The short lists shall normally comprise at least three firms but not more than eight (to avoid inordinate delays in evaluation of subsequent RfP). The short list may comprise only national consultants (firms registered or incorporated in the country), for small assignments and indicated in the Eol. This situation is applicable where qualified national firms are available at a competitive cost or if the nature of the assignment is such that a foreign consultant's inclusion is not justified (for example, a training or outreach to be carried out in local language) or if foreign consultants have not expressed any interest. RfP documents would be issued only to the shortlisted consultants.

The evaluation committee may submit its Eol Evaluation report to CA for approval.

Higher qualification criteria increase the likelihood of adequate experience/ capacity, but reduce the competition; if set unduly high they may increase the cost without any improvement in quality. **It is suggested that the criteria should be fixed on a reasonable basis while drafting tender documents and such higher minimum qualifying turnover should be kept only, if adequately justified.**

## 5.5 Selection of consultants by Competitive Process

### 5.5.1 The evaluation process

The selection process for consultants generally includes the following steps:

- i) Preparation and issuance of the Request for Proposals (RfP);
- ii) Pre-proposal meeting;
- iii) Receipt of proposals;
- iv) Evaluation of technical proposals: consideration of quality;
- v) Public opening of financial proposals;
- vi) Evaluation of financial proposals;
- vii) Selection of the winning proposal;
- viii) Negotiations with the selected bidder, if required; and
- ix) Award of the contract to the selected firm.

### 5.5.2 Preparation and Issuance of the Request for Proposals (RfP)

The Request for Proposals (RfP) is the bidding document in which the technical and financial proposals from the consultants are obtained. For procurement of Consultancy Services, the RfP is sent only to the short listed consultants. ***In procurement of other (non-consultancy) Services, since the procurement is done without Eol, RfP is advertised, except in case when value of procurement is less than Rs 10 (Rupees Ten) Lakh.*** It contains the following

sections:

- i) A letter of invitation (Lol);
- ii) Information to consultants (ITC) and data sheet (which contains assignment specific information);
- iii) Terms of Reference (ToR);
- iv) List of key experts required for the assignment;
- v) Requirement of qualifications and experience of the firm and key experts;
- vi) Criteria of proposal evaluation and selection procedure;
- vii) Standard formats for the technical proposal;
- viii) Standard formats for the financial proposal; and
- ix) Proposed form of the contract, including Conditions of Contract and Special Conditions of Contract;
- x) Proposed procedure to be followed pertaining to mid-term review of the progress of the work and review of the final draft report.

IFCI shall use the applicable standard RfP with minimal changes as necessary to address project-specific issues. IFCI may use e- Procurement platform to issue RfP.

**Simplified Technical Proposal:** In LCS system of evaluation, since the technical scores are not ranked or weighted and added to Financial Scores, it would suffice if instead of a detailed marking scheme for the criteria/ sub criteria, minimum fail-pass qualifying benchmarks are laid down for each criteria/ sub criteria. For such assignment technical evaluation can be carried out by following a simplified procedure for evaluation of technical quality and only a Simplified Technical Proposal (STP, instead of a Full Technical Proposal - FTP) may be called for and indicated in the data sheet of the RfP document. STP should be used, when the assignment is: (i) unlikely to have significant downstream impact; (ii) of a routine nature where ToR already defines details of tasks to be performed and required output and approach, methodology, organisation and staffing could be evaluated without use of sub criteria; and (iii) that characteristics of work do not require further detailed evaluation of the consultant's experience (e.g. engagement of accountants, auditors, consultant engineers etc). STP reduces the time and cost required to prepare the proposal and could be evaluated faster by the Evaluation Committee. For example following parameters can be used:

- i) Minimum experience including number of assignments handled by the firm similar to the area of assignment;
- ii) Turnover and other financial parameters of the firm, if required;
- iii) Minimum educational qualifications of each of the key professionals;
- iv) Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.

All the firms which meet the minimum qualifying standards/ criteria so prescribed will stand technically qualified for consideration of their financial bids.

### 5.5.3 Letter of Invitation (Lol)

The Letter of Invitation (Lol) shall state the intention of IFCI to enter into a contract for the provision of consultancy services, details of IFCI, and date, time, and address for submission of proposals.



#### 5.5.4 Instructions to consultants (ITC)

The Instructions to consultants (ITC) shall consist of two parts: (1) standard information; and (2) assignment specific information. The assignment specific information is added through the data sheet. The ITC contains all necessary information that would help the consultants prepare responsive proposals and shall bring in as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and minimum passing quality score. Standard information includes clauses relating to the procedure of bid submission, relating to pre-bid meeting, for seeking clarifications, and so on. The assignment/job specific information will be prepared separately and include the date and time of bid submission, contact address, qualification criteria, method of selection, evaluation process, factors of evaluation and their respective weights, and so on.

Since cost is part of the selection criterion the ITC shall not indicate the budget (except in case of Fixed Budget System of selection) but shall indicate the expected input of key professionals (staff time). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period [normally 60 (sixty) days].

#### 5.5.5 Standard Formats for Technical and Financial Proposals

- i) The standard formats for technical proposals include those specified for FTP or STP:
  - a) Technical proposal submission form (including declaration on conflict of interest, eligibility, following Code of Integrity in Public Procurement - CIPP);
  - b) For a JV, a Lol or copy of existing agreement, as applicable;
  - c) Power of attorney (in case of a JV, lead member to be authorised);
  - d) consultant's organisation and experience (for FTP only);
  - e) Comments and suggestions on ToR, counterpart staff and facilities to be provided by the client (for FTP only);
  - f) Description of approach and methodology and work plan for performing the assignment;
  - g) Work schedule and planning for deliverables; and
  - h) Team composition, key expert's inputs, attached CVs.
  - i) Format for Comments/ modifications suggested on proposed form of contract.
- ii) The standard formats for a financial proposal include:
  - a) Financial proposal form;
  - b) A summary sheet of the cost to be quoted by the Bidder;
  - c) Remuneration payable; and
  - d) Reimbursable expenses

#### 5.5.6 Important Provisions of RfP/ Contracts

- i) **Currency:** Under normal circumstances, all the contracts should be based on Indian Rupees only. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RfP. If RfP allows proposals in any other currency, the date and the exchange rate (normally date of opening of the Technical Bid) for converting all the bid prices to Indian Rupees shall be indicated in RfP.
- ii) **Price Adjustment:** In case the duration of the contract is expected to exceed 18 (eighteen)

months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). 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, manpower, etc.), prone to short-term price volatility - especially for critical or high value services - 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 manpower in the price variation formula.

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 excise duty and other duties and taxes), the percentage and element of duties and taxes included

in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;

- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
  - j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
  - k) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC: **"It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."**
  - l) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.
- iii) **Payment Provisions:** Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be indicated in RfP and also in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts).

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments for example in the following types of cases :-

- a) Advance payment demanded by firms holding maintenance contracts for servicing of Air-conditioners, computers, other costly equipment, etc.
  - b) Advance payment demanded by firms against fabrication contracts, turn-key contracts etc.
- Such advance payments should not exceed the following limits :
- 1) Thirty per cent, of the contract value to private firms;
  - 2) Forty per cent, of the contract value to a State or Central Government agency or a Public Sector Undertaking; or
  - 3) in case of maintenance contract, the amount should not exceed the amount payable for six months under the contract.

IFCI may relax, the ceilings (including percentage laid down for advance payment for private firms) mentioned above. While making any advance payment as above, adequate safeguards in the form of bank guarantee etc. should be obtained from the firm.

**Proposed form of contract:** The contract includes accepted ToR methodology, general and specific conditions of contract, etc. wherever possible, IFCI shall use the Standard Form of Contract. The conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to sub-contracting, methods of payment,

termination and extension of contracts, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc. The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of IFCI.

**Conflict of Interest:** The consultant shall not receive any other remuneration from any source in connection with the same assignment except as provided under the contract. Consultants assisting a client in privatisation of public assets shall neither purchase nor advise purchasers of such assets. Similarly, consultants hired to prepare ToR for an assignment shall not be hired for the assignment in question and shall not be in a conflict of interest situation as described in the RfP/contract.

**Professional Liability:** The consultant is expected to carry out its/his assignment with due diligence and in accordance with the prevailing standards of the profession. As the consultant's liability to IFCI will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct; (b) the consultant's liability to IFCI may, in no case, be limited to less than a multiplier of the total value of the contract to be indicated in the RfP and special conditions of contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward IFCI and not with the consultant's liability toward third parties.

**Staff Substitution of Key Professional:** During an assignment where key professionals are named in the contract, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at least the same level of qualifications for approval by IFCI. The RfP/contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid, and so on.

**Applicable Law and Settlement of Disputes:** The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes - applicable Arbitration Clause and procedures.

**Training or Transfer of Knowledge:** If the assignment includes an important component of training or transfer of knowledge to the Ministries/ department staff, the ToR shall indicate the objectives, nature, scope, and goals of the training programme, including details on trainers and trainees, skills to be transferred, timeframe, and monitoring and evaluation arrangements. The cost of the training programme shall be explicitly stated in the consultant's contract and in the budget for the assignment.

### 5.5.7 Tender Documents

- a) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of IFCI and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation

and possible time overrun, cost overrun and quality compromises. Model Tender Documents issued by the DoE may be used, with due customisation.

- b) In tenders containing Conditions of Contract (CC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- c) Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.
- d) Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- e) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- f) Pre-bid conference may be conducted for large value tenders. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of IFCI and/ or through newspaper publication.

### 5.5.8 Pre-proposal Meeting

In all cases of large value or complex assignments, a pre-proposal meeting may be prescribed in the RfP. The date and time for such a meeting should normally be after 15 to 30 (fifteen to thirty) days of issue of the RfP and should be specified in the RfP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of the RfP as a result of the pre-bid meeting or otherwise considered necessary by IFCI, a formal corrigendum to the RfP may be issued, to all bidders. In such cases, it should be ensured that, after issue of the corrigendum, reasonable time (not less than 15 (fifteen) days) is available to the bidders to prepare/submit their bids. If required, the time for preparation and submission of bids may be extended, suitably.

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

### 5.5.9 Receipt of Proposal

IFCI should allow enough time to the bidders to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks and not more than three months. In cases where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed. If necessary, IFCI shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time.

To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes, kept in an outer sealed envelope. The technical bids will be opened immediately after closing of receipt of technical bids by the Consultancy Evaluation Committee (CEC). The financial proposals shall remain sealed and shall be opened publicly only for those firms that have qualified technically. Any proposal received after the closing time for submission of proposals (Late Bids) shall not be considered and shall be returned unopened. It may be noted that as per guidelines, now all procurement are to be done through e-Procurement.

#### **5.5.10 Consultancy Evaluation Committee (CEC)**

For all cases having financial implications of more than Rs. 10 (Rupees Ten) Lakh, a Consultancy Evaluation Committee (CEC), comprising of normally three members including Representative of the user department, shall be constituted as per SoPP, in order to carry out the consultant selection procedure. The CEC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. No member of CEC should be reporting directly to any other member of the CEC. The CEC shall be responsible for all aspects and stages of the consultant selection, that is, evaluation of EoI, shortlisting of consultants, deciding TORs, issuance of RfP, evaluation of technical and financial proposals, negotiations and final selection of the consultant. There no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. Even in case of selection of a consultant by direct negotiations having financial implications more than Rs. 10 (Rupees Ten) lakh, the CEC shall negotiate with the consultant on technical and financial aspects, (separate committees may be constituted for separate assignments).

The representative of the user Department will work as a convener of the CEC. He shall distribute the RfP to the CEC members and request them to familiarize themselves with the characteristics and requirements of the assignment, the selection procedures, and the evaluation criteria and sub-criteria. The convener of the CEC should also call meeting of the CEC members to review any questions they may have on the evaluation principles, procedures, and objectives etc.

Technical proposals for consultancy services are an intellectual product. Their evaluation must be based on individual professional judgement of competent evaluators and should not be reduced to a purely arithmetical exercise. The difficulty is to ensure that this judgement is not exercised in an unreasonable or arbitrary manner. It is important that subjectivity, implicit to any individual professional judgement, be complemented by transparency, consistency, and fairness. The individual evaluator entrusted with the evaluation, when required, should be able to explain to the satisfaction of a qualified reviewer from the higher authority or to enforcement agencies the reason for his/her scoring and recommendation. One way to achieve this objective is by adopting a rating/grading system for evaluation of the criteria and sub-criteria (if so specified in the RfP) in the technical proposals.

After the review meeting, the CEC meets again to define the grades of the rating system to be adopted for scoring the technical proposals (if not detailed in the RfP), according to the criteria and sub criteria set out in the Data Sheet. To discourage subjectivity and avoid the use of points and fractions of points, the rating system provides a few grades (from three to four) for each criterion and sub-criterion. Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RfP. The grading system must be defined before the technical proposals are opened to prevent bias (or perceived bias) occurring because of

the CEC's knowledge of the opened proposal contents. It is recommended that the evaluation and scoring of technical proposals be carried out only after defining the grading system. Otherwise, CEC members would have to assign a level of responsiveness of the proposals to each of the different criteria and sub criteria without guidance and support from predefined grades. This could easily distort the evaluation for the following main reasons:

- i) Evaluators may differ, even widely, in their definition, understanding, or interpretation of the same criterion and also because of their subjective experience and understanding of the ToR;
- ii) Disparities in evaluators' relative generosity or severity in judgment and ratings can easily be magnified by the lack of common definitions of the requirements to be considered for each criterion and sub-criterion;
- iii) Large differences in scores caused by inadequate understanding of the ToR or improper use of the evaluation criteria and sub-criteria are difficult to reconcile and explain.

Before starting the evaluation, the CEC members should ensure that they

- i) have no conflict of interest;
- ii) understand the rating and scoring system;
- iii) have been provided with evaluation worksheets; and
- iv) Agree on how to evaluate the proposals.

After the rating system has been defined and proposals have been opened, the evaluation process can begin. Members of the CEC should not engage in any communication with short-listed firms from the date of their appointment to the date on which the contract is awarded.

Precise and exact markings of criteria and sub-criteria specified in technical evaluation (especially of unquantifiable criteria e.g. evaluation of Methodology) may neither be feasible nor warranted, especially when there is bound to be variation among marks by different members of CEC. Instead of assigning marks over the full range of attributes, it is more appropriate to divide the range into 4-5 slabs of ratings.

The evaluation of the proposals shall be carried out in two stages: at the first stage evaluation of responsiveness and technical proposals is taken up. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded as the envelope containing the financial proposal is not opened till the technical evaluation is complete. The financial proposal of only such bidders will be opened which obtain minimum qualifying marks/standards prescribed for the technical proposal. The evaluation shall be carried out in full conformity with the provisions of the RFP.

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

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

The Competent Authority (CA) can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

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

#### **5.5.10.1 First Stage of Evaluation: Consideration of Responsiveness**

Each member of the CEC should first read all proposals, without scoring them. This first review helps determine whether the proposals are free of significant omissions or deviations from the ToR or other key requirements of the RfP; it also allows CEC members to assess the overall clarity of the proposals and identify elements that will require special attention in the evaluation. Proposals without earnest money (bid security), unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the ToR fully and properly and those with lesser validity than that prescribed in the RfP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality. CEC shall evaluate each proposal on the basis of its responsiveness to the ToR. A proposal shall be considered unsuitable and shall be rejected at this stage if it fails to comply with important aspects as described in the RfP. A technical proposal containing any material financial information shall also be rejected

#### **5.5.10.2 Evaluation of the Quality - Technical Proposals**

In the second stage evaluation process CEC members shall apply the criteria and sub-criteria set forth in the Data Sheet. Each proposal should be judged on its own merits and assigned an absolute - not comparative - grade. A comparative evaluation would single out the best proposal on a relative scale, but still could leave IFCI with a poor proposal. Instead, the evaluation should measure absolute quality scored against predefined criteria and sub-criteria. IFCI shall evaluate each technical proposal taking into account criteria as prescribed in the RfP: (a) the consultant's relevant experience for the assignment; (b) the quality of the methodology proposed; (c) the qualifications of the key staff proposed; and (d) capability for transfer of knowledge (if relevant). Each of the technical proposals will be evaluated for the criteria prescribed in the RfP by awarding marks so as to make the total maximum technical score of 100 (one hundred). The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively.

At the end of the technical evaluation process, the CEC shall prepare a technical evaluation report of the "quality" of the proposals recording the scores given to each criterion and sub-criterion, as well as explain the decisions and take the competent authority's (CA) approval. For each proposal, the report also should substantiate the results of the evaluation and indicate technical weaknesses or deviations from the terms set out in the RfP and comment on their acceptability.

Only consultants qualifying as per the technical evaluation criteria will be considered as



eligible for the consultancy assignment. All the firms which meet the minimum qualifying standards/criteria so prescribed will stand technically qualified for consideration of their financial bids.

### **5.5.10.3 Evaluation of Cost**

After evaluation of quality has been completed, IFCI shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RfP and/or ToR, indicating that their financial proposals will be returned unopened after completing the selection process. In case of QCBS, IFCI shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks, and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. The financial proposals shall be opened publicly in the presence of representatives of the technically qualified consultants who choose to attend. The Evaluation Committee demonstrably verifies that the financial proposals have remained sealed and then opens them. The name of the consultant, quality scores, and proposed prices shall be read aloud and recorded when the financial proposals are opened. No modification to financial proposals is permitted. When electronic submission of proposals is used, this information shall be posted online.

For a time-based contract, any arithmetical errors shall be corrected and prices shall be adjusted if they fail to reflect all inputs that are included in the respective technical proposals. For a lump-sum contract, the consultant is deemed to have included all prices in its/his financial proposal so neither arithmetical correction nor any other price adjustment shall be made. For QCBS, the proposal with the lowest offered total price shall be given a financial score of 100 % (one hundred per cent) and other financial proposals given scores that are inversely proportional to their prices. This methodology shall be specified in the RfP document

For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RfP. The CEC shall make this conversion by using the BC selling exchange rates for those currencies as per the exchange rate quoted by an official source, for example, the State Bank of India. The RfP shall specify the source of the exchange rate to be used and date of the exchange rate to be taken for comparison of costs. This date shall be the date of opening of technical bids

For the purpose of evaluation, the total cost shall include all taxes and duties for which IFCI makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses as indicated in the RfP document

When using QCBS, the scores of quality and cost scores shall be weighted appropriately and added to determine the most advantageous proposal.

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. IFCI may in such cases seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to scope,

schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, IFCI determines that the Bidder has **substantially failed** to demonstrate its capability to deliver the contract at the offered price, IFCI may reject the Bid/Proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

#### 5.5.10.4 Selection of the winning consultant

Before a final award is announced, the technical and financial credentials of the selected bidders/ consultant should be crosschecked to the extent feasible.

#### LCS Selection

Under the LCS procedures, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The CEC will put up a report on financial evaluation of the technically qualified consultants along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract.

#### QCBS Selection

Under QCBS selection, the technical proposals will be allotted weightage of 70% (Seventy per cent) while the financial proposals will be allotted weightages of 30% (Thirty per cent) or any other respective weightages as declared in the RfP (Example, 60:40, 50:50, but not greater than 80%). The proposed weightages for quality and cost shall be specified in the RfP. Proposal with the lowest cost may be given a financial score of 100 (Hundred) and other proposals given financial scores that are inversely proportional to their prices w.r.t. the lowest offer. Similarly, proposal with the highest technical marks (as allotted by the evaluation committee) shall be given a score of 100 (Hundred) and other proposals be given technical score that are proportional to their marks w.r.t. the highest technical marks. The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2, H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract. In the event two or more bids have the same score in final ranking, the bid with highest technical score will be H-1

In such a case, an Evaluated Bid Score (B) will be calculated for each responsive Bid using the following formula, which permits a comprehensive assessment of the Bid price and the technical merits of each Bid:

$$B = \underline{C}_{low} X + \underline{T} (1-X)$$

$C$                        $T_{High}$

where

$C$  = Evaluated Bid Price

$C_{low}$  = the lowest of all Evaluated Bid Prices among responsive Bids

$T$  = the total Technical Score awarded to the Bid

$T_{High}$  = the Technical Score achieved by the Bid that was scored best among all responsive Bids

$X$  = weightage for the Price as specified in the BDS

The Bid with the best evaluated Bid Score (B) among responsive Bids shall be the Most Advantageous Bid

As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 (Seventy five) and the weightage of the technical bids and financial bids was kept as 70: 30 (Seventy: Thirty). In response to the RfP, three proposals, A, B & C were received. The technical evaluation committee awarded the following marks as under:

A: 75 Marks

B: 80 Marks

C: 90 Marks

The minimum qualifying marks were 75 (Seventy five) thus, all the three proposals were found technically suitable. Using the formula  $T/T_{High}$ , the following technical points are awarded by the evaluation committee:

A:  $75/90 = 83$  points

B:  $80/90 = 89$  points

C:  $90/90 = 100$  points

The financial proposals of each qualified consultant were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

A: Rs.120.

B: Rs.100.

C: Rs.110.

Using the formula  $C_{low}/C$ , the committee gave them the following points for financial proposals:

A:  $100/120 = 83$  points B:

$100/100 = 100$  points C:

$100/110 = 91$  points

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A:  $83 \times 0.30 + 83 \times 0.70 = 83$  points.

Proposal B:  $100 \times 0.30 + 89 \times 0.70 = 92.3$  points

Proposal C:  $91 \times 0.30 + 100 \times 0.70 = 97.3$  points.

The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A: 83 points: H-3 Proposal B: 92.3 points: H-2

Proposal C: 97.3 points: H-1

Proposal C at the evaluated cost of Rs.110 (Rupees One hundred and ten) was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

### SSS selection

The Single Source in case of SSS selection shall be called for further negotiation, if need be, after opening and evaluation of its financial proposals.

## 5.6 Procurement (Outsourcing) of Other (Non-consultancy) services

### 5.6.1 Applicability on Procurement (Outsourcing) of Other (Non-consultancy) Services

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

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

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

Any circumstance which is not covered in this chapter for procurement of no consulting services, the IFCI may refer to the Manual of Policies and Procedures for Procurement of Goods.

It is possible that, depending on the nature and complexity of the assignment, a task could be dealt with either as a consultancy or non-consultancy service. In essence, if the intellectual and advisory

part of services dominates (and the physical part is incidental), the selection needs to be dealt with in Consultancy mode. For example, if the task is looking at the condition of a dam (for dam safety) by physically inspecting a dam through underwater observation, this task is collection of data using technologies and photography, but the actual analysis is an intellectual and advisory task and is the crux of the assignment. Therefore, the entire task needs to be dealt with as selection of a consultant.

### 5.6.2 When is Procurement/ Outsourcing of Other (Non-consultancy) Services justified

In the interest of economy, efficiency and to provide more effective delivery of public services, it is permitted to procure/ outsource auxiliary and support services. Approval of the competent authority should be obtained before engaging service providers.

### 5.6.3 Principles for Public Procurement of other (non-consultancy) services

Additional principles of procurement needed to ensure value for money in of procurement of other services are to ensure:

- i) Services to be procured should be justifiable;
- ii) In other (non-consultancy) services an Activity Schedule (a document covering well-defined scope of work/ description of services and the time frame for which services are to be availed of) should be consistent with the overall objectives of IFCI;
- iii) Equal opportunity to all qualified service providers to compete should be ensured
- iv) Engagements should be economical and efficient; and
- v) Transparency and integrity in the selection process (that is, proposed, awarded, administered, and executed according to highest ethical standards);

**Period of Contract:** A very short period of contract would require spending needless administrative time in repeating the exercise at short intervals while a very lengthy contract period may affect service quality. Therefore, in the normal course, the period of initial contract may be fixed normally for two years.

**Extension of Contract:** The clause of extension of contract beyond the period of two years may be for a further period of one year subject to the service provider providing satisfactory service. Thereafter fresh bidding for new tender for the said service may be undertaken. In all cases where the Service Provider has been levied a cumulative penalty of 5 percent of the total contract value, extension beyond the initial period of two years may not be considered.

**Instances of Multiple L1s:** In number of cases, especially non-consultancy services, usually multiple bidders emerge as L1. GeM provides following two options to choose the vendor to be engaged in case of multiple L1s:

- i) system determined vendor selection.
- ii) purchaser can select the vendor.

Multiple factors may weigh upon the decision of selecting the successful contractor. GeM system-based selection could be more transparent, however, it takes away the discretion with purchaser to select a particular contractor, without any financial repercussion, on the basis of past experience in a particular department. On the other hand there may be instances where a IFCI may be more

comfortable with system based L1 selection method. Hence, the decision on the method of selection of successful contractor in case of multiple L1 may be left with the IFCI. However, the method of selection of successful contractor in case of multiple L1 should be decided prior to issue of tender.

**Past Experience:** Bid documents may provide for a qualification criterion considering past experience. Normally past experience in supply of service at a particular station or to Central Government Ministries/ Departments is considered too restrictive. However, in case such restriction is considered essential the same may be provided for in the bid documents, duly recording reasons for such decisions on the file.

**Housekeeping Services:** In the case of Housekeeping/ cleaning services, GeM platform provides for Options based on (a) Floor Area wise cleaning and (b) Manpower. Usually, the floor area wise cleaning option is more cost effective. Accordingly, before a tender is floated, an exercise maybe undertaken to determine the option which is considered beneficial for the organization, duly recording reasons for such decision on file.

Hiring of manpower through contracts should be avoided to ensure no future legal problems as these employees may demand regularization afterwards. Even, if employed, there should be no direct correspondence with such people. Even I-cards should be issued indicating the person to be representative of the contractor (name of the contractor to be mentioned).

#### 5.6.4 Types of Contracts in Other (Non-consultancy) Services

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

#### 5.6.5 System of Selection in Other (Non-consultancy) Services

Unlike Procurement of Consultancy Services, procurement of other services is done by a simpler process akin to those of procurement of Goods and Works. It is normally done in a Single Stage (RfP) Process containing Technical and Financial bids. However, in highly technical and complex services, where quality is important (say in studies like seismic surveys, airborne data acquisition etc) a pre-qualification (PQB) process may be done on the lines of procurement of Goods and Works.

In procurements above Rs 10 Lakh, it should normally be an advertised RfP. For procurement below Rs 10 Lakh, RfP can be issued to a selected shortlist of likely service providers. IFCI should scrutinise the preliminary long list of likely service providers and shortlist the prima facie eligible and capable service providers from the long list. The number of service providers in this moderated long-list should be more than three.

In procurement of other (non-consultancy) services normally system of selection used is lowest price (L-1) basis among the technically responsive offers, as in procurement of Goods/ works. Under very special circumstances Single Source Selection may also be used.

## 5.6.6 Procurement Proposal (Concept Paper) for other (non-consultancy) Services

### Obtaining Final Administrative and Budgetary Approvals

Before a final administrative and budgetary approval is taken, a detailed Activity Schedule and Cost estimate is required to be prepared.

### Activity Schedule and Other Requirements

The objectives of the Activity Schedule are:

- i) To provide sufficient information on the quantities of Services to be performed to enable bids to be prepared efficiently and accurately; and
- ii) When a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

## 5.6.7 Estimating Costs, Setting the Budget, and seeking Approval

Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the IFCI's assessment of the resources needed to carry out the assignment: managerial and staff time and physical inputs (for example, materials, consumables, tools and machines). Costs shall be divided into three broad categories:

- i) Remunerations for Personnel deployed;
- ii) Reimbursable: (Travel, logistics, Consumable, Material, Tools, Hiring of third party services etc.);
- iii) Administrative and Miscellaneous (Mobilisation, demobilisation, Temporary Structures, Administrative expenses, office and IT equipment, contingencies, financing costs, Costs for hiring/ depreciation/ financing of machinery and equipment etc).

In general, staff remuneration rates include basic salary, social charges, overheads, fees or profit and allowances. Profit element, Taxes and duties should be added to the estimated costs.

## 5.6.8 Final Administrative and Budgetary Approvals

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

### 5.6.9 Procedure for Small Value and emergency Procurements of Other (Non-consultancy) Services

In many small value procurement of other services, the service provider may neither be capable of handling the bidding process, nor would this be a cost-effective process for the IFCI. For procurement up to Rs 25,000 (twenty five thousand), the 'Direct Procurement without Quotation' mode of procurement used in Procurement of goods may very well be utilised in such cases. Similarly for procurement of services upto Rs 2.5 Lakh, 'Direct Procurement by a Purchase Committee' mode as used in procurement of Goods may be utilised. In all such modes of procurement, the procedure prescribed in the Manual for Policies and Procedures for Procurement of Goods may be followed.

### 5.6.10 Procedure for Procurements below Rs 10 Lakh

For procurements below Rs. 10 Lakh, the User Department / RO should prepare a list of likely and potential service providers on the basis of formal or informal enquiries from Ministries or Departments and Organisations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc. User Department / RO should scrutinise the preliminary list of likely contractors as identified above, shortlist the prima facie eligible and capable contractors and issue RfP to these shortlisted firms on a limited tender enquiry basis as per standard practice. The number of the contractors so identified for issuing RfP should be more than three. Services which are available on GeM have to be mandatorily procured through that portal.

### 5.6.11 Procedure for higher Value of Procurements

For Procurements above the Rs 10 Lakh, FCI should issue advertise single stage tender enquiry asking for the offers by a specified date and time etc. Advertisement in such case should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in), on Government E-Market (GeM) and IFCI's website. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. Attention of known reputed service providers may also be separately drawn wherever possible. Services which are available on GeM have to be mandatorily procured through that portal.

### 5.6.12 Preparation of the Request for Proposals (RfP)

In procurement of other (non-consultancy) Services, a Standard RfP document should be basis for preparation of Bid Documents. There are variations in the way information and sections in standard RFPs are formulated but essential information/sections are as follows:

- i) A letter of invitation (Lol);
- ii) Instructions to Bidders (ITB) and data sheet (which contains assignment specific information);
- iii) Qualification/ Eligibility Criteria for service providers;
- iv) Activity Schedules and other Requirements
  - a) Description of Service
  - b) Activity Schedule
  - c) Manpower Schedule: Assessment of Manpower for Deployment
  - d) Materials Schedule (indicating the specification and quantity of such materials/ consumables/ tools to be consumed/ deployed per unit activity/ day/ location/ per



- manpower deployed).
- e) Essential Equipment: Any essential equipment, machinery that the service provider must have as a qualifying requirement along with specification, capacity, age of equipment etc.;
- f) The statutory and contractual obligations to be complied with by the contractor.
- g) Services & Facilities to be Provided by the IFCI and respective obligations of the IFCI and service provider
- v) Conditions of Contract (CC);
- vi) Special Conditions of Contract (SCC);
- vii) Formats
  - a) service provider's Bid Cover Letter
  - b) Qualification Information
  - c) Standard formats for the technical proposal;
  - d) Standard Format for the Financial Proposal
  - e) Letter of Acceptance
  - f) Contract Form
  - g) Securities Formats
    - 1. Bid Security (Bank Guarantee)
    - 2. Bank Guarantee for Advance Payment
    - 3. Performance Security (Bank Guarantee)

### 5.6.13 Important Provisions of Instruction to Bidders (ITB)

**Eligibility Criteria:** Eligibility for firms to be considered as responsive bid in procurement of Other (Non-consultancy) Services should be specified. For example:

- i) The bidder must be registered under appropriate authorities i.e. must be registered with Service Tax authorities/income Tax/EPF/ESI authorities/ PSARA/ PAN etc;
- ii) **Joint Ventures (JV) are normally not permitted in the procurement of Other (Non-consulting) services;**
- iii) Must not have been under any declaration of ineligibility by any authority. A declaration to the effect should be furnished;
- iv) A consistent history of litigation or arbitration awards against the Applicant may result in disqualification;
- v) Each Bidder shall submit only one Bid for one RfP. The system shall consider only the last bid submitted through the e-procurement portal. In case of Packaging/ Slicing of Services, it should be clarified, how multiple bids and discounts by a bidder in different slices would be considered.

**Qualifying criteria** to be met by bidders to qualify for award of the Contract may be specified. Although the qualification criteria would depend on the type of service, its complexity and volume, but a sample qualifying criteria is given below:

#### i) Financial Capability

- a) Average Annual financial turnover of related services during the last three years, ending 31st March of the previous financial year, should be at least 30% (thirty percent) of the estimated cost.
- b) Liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the BDS.

#### ii) Past Experience

- a) The bidder must have at least three years' experience (ending month of March prior to the bid opening) of providing similar type of services to Central/State Government/ PSUs/ Nationalised Banks/ Reputed Organisations. Services rendered with list of such Central/State/ PSUs/ Nationalized Banks with duration of service shall be furnished.
- b) The bidder must have successfully executed/completed similar Services (definition of "similar services" should be clearly defined), over the last three years i.e. the current financial year and the last three financial years: -
  1. Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost; or
  2. Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost; or
  3. One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost.

**iii) Equipment and Managerial Capability:**

- a) Ownership/ proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the BDS;
- b) a Contract Manager with five years' experience in Services of an equivalent nature and volume, including no less than three years as Manager;

**Qualification Documents to be submitted:** To judge their qualification, all bidders should be asked to include the following information and documents with their bids:

- i) Copies of original Registration certificate documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder. Appropriate business licences/ registrations:
  - a) Service Tax registration certificate
  - b) PAN number
  - c) Copies of EPF, ESI, Labour license
  - d) Copy of valid license under the Private Security Agencies (Regulation) Act, 2005 or the similar Act/ Rules promulgated by State in which the service is performed (in case of Security Service)
- ii) Total monetary value of Services performed for each of the last five years;
- iii) Copies of work orders and experience in Services of a similar nature and size for each of the last three years, and details of Services under way or contractually committed; and names and address of clients who may be contacted for further information on those contracts;
- iv) Evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- v) Audited financial Statements for the last three years (Copies of the Profit and Loss (P/L) statements along with Balance Sheet for the concerned period);
- vi) Bank Account details;
- vii) Authority to seek references from the Bidder's bankers;
- viii) Information regarding any litigation, current or during the last five years, in which the Bidder is involved, the parties concerned, and disputed amount; and
- ix) Proposals for subcontracting components of the Services amounting to more than 10 (ten) percent of the Contract Price.

**Site Visit:** The Bidder, at the Bidder's own responsibility and risk, may be encouraged to visit at their own cost, and examine the Site of required Services and its surroundings and obtain all

information that may be necessary for preparing the Bid and entering into a contract for the Services.

**Restrictions regarding Personnel Deployed:** The quoted rates shall not be less than the minimum wage fixed/notified by the State Government - where the service is performed and shall include all statutory obligations. However bids without any element of cost over and above such minimum wage (or below it) shall be treated as 'Nil' price quotation and would be rejected. The service provider shall be liable for all kinds of dues payable in respect of all personnel provided under the contract and the IFCI shall not be liable for any dues for availing the services of the personnel. The service provider should ensure that persons to be deployed are not alcoholic, drug addict and not indulge in any activity prejudicial to the interest of the IFCI. The service provider shall ensure to get the Police verification for all the manpower deployed by them and the contractor should ensure that the manpower deputed should bear good moral character.

**Workmen Safety and Insurance:** The service provider shall alone be fully responsible for safety and security and insurance or life insurance of their personnel who is working on the operation and maintenance works. The service providers (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at their (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the IFCI, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the IFCI's request, shall provide evidence to the IFCI showing that such insurance has been taken out and maintained and that the current premiums have been paid. The service provider shall provide and ensure sufficient protection gears like safety shoes, hand gloves, ladders, etc. are being used by their workers while carrying out works. The IFCI shall not be liable for any compensation in case of any fatal injury/death caused to or by any man power while performing/discharging their duties/ for inspection or otherwise.

**Liquidated Damages for Delay in Performance:** The service provider shall pay liquidated damages to the Procuring Entity at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.

**Penalty for non-performance:** If the service provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in SCC.

**Filling up the Financial Bid by the Bidders:** The Bidder should be asked to fill in rates and prices for all items of the Services described in the in the Activity Schedule. Items for which no rate or price is entered by the Bidder will not be paid for by the IFCI when executed and shall be deemed covered by the other rates and prices in the Activity Schedule. The priced Activity Schedule contains sections on Remuneration for Staff deployed, Reimbursable Expenses and Miscellaneous Expenses. All duties, taxes, and other levies payable by the service provider under the Contract, or for any other cause, as in the month prior to the month of the deadline for submission of bids, should be included in the total Bid price submitted by the Bidder. For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Bidder. Bidding Documents should include a clause that "if a firm quotes NIL charges/ consideration, the bid shall be treated as unresponsive and will not be considered".

## Price Adjustment

In case the duration of the contract is expected to exceed 18 (eighteen) months for a time-based contract or an Indefinite delivery contract, a price adjustment provision for the remuneration rate should be included in the contract based on the Consumer Price Index in the country. Lump-sum contracts shall not generally be subject to price adjustment except for small value multi-year contracts (for example, for auditors). 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 services - 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 man power in the price variation formula.

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 excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i) The clause should also contain the mode and terms of payment of the price variation admissible; and
- j) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k) Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:  
***“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”***
- l) Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

#### 5.6.14 Standard Formats for Technical and Financial Proposals

- i) The standard formats for technical proposals should include:
  - a) service provider’s Bid Cover Letter(including eligibility, following Code of Integrity in Public Procurement - CIPP);
  - b) Power of attorney;
  - c) Qualification Information with enclosures;
  - d) Write up on Bidder’s Organisation, confirmation of compliance with (or deviations from)Description of Services, Activity Schedule, Essential Equipment Schedule, Manpower/ Team, Statutory Obligation and Facilities to be provided by the IFCI, Statutory and Contractual requirements, Respective obligations of IFCI and service provider, Contract For, GCC and SCC; etc. and
  - e) Enclosures: Cost of Bid/ Bid Processing Fee/ Bid Security
- ii) The standard formats for a financial proposal include:
  - a) Financial Bid Format;
  - b) Summary Price Schedule;
  - c) Priced Activity Schedule;
  - d) Priced Material Schedule;
  - e) Priced Miscellaneous Schedule (including administrative costs, Essential Equipment, Operating Manpower);
  - f) Breakdown of Contract Prices

### 5.6.15 Receipt of Bids, Evaluation and Award of Contract

Receipt and opening of Bids is done in a manner similar to procurement of other categories.

The IFCI should evaluate, segregate, rank the responsive bids and select the successful bidder for placement of the contract, in a manner similar to Procurement of Goods/ Works. IFCI will award the Contract to the Bidder whose Bid has been determined as the lowest evaluated Bid price, provided the offer is determined in accordance with the bid documents to be:

- i) Substantially responsive;
- ii) Eligible bidder;
- iii) Meets the minimum Technical/ qualification standards

If, the contract is being let on a “slice and package” basis, the lowest evaluated Bid Price will be determined when evaluating the contract in conjunction with other contracts to be awarded concurrently, taking into account any discounts offered by the bidders for the award of more than one contract.

The IFCI reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the IFCI’s action.

Notification of Award, Performance Security and Signing of the Contract also follows same procedure as in other categories of procurements.

### 5.6.16 Service Level Agreement (SLA)

A service level agreement (SLA) is an agreement designed to create a common understanding about services, priorities and responsibilities, improve communications, manage expectations, clarify responsibilities and build the foundation for a win-win relationship. It must be specified in the bidding Document and finalised before the Services are started. The objectives of SLA are:

- i) Identify and define the IFCI’s needs;
- ii) Eliminate unrealistic expectations on either side;
- iii) Provide a framework for understanding between the service provider and the IFCI;
- iv) Reduce areas of conflict and encourage dialog in the event of disputes

While drafting the SLAs, care should be taken that they are balanced to both the contracting parties and penalties are proposed on both the sides.

SLA has two sets of elements:

#### a) Service elements

1. the services to be provided (and perhaps certain services not to be provided, if IFCI might erroneously assume the availability of such services);
2. conditions of service availability;
3. service standards, such as the timeframes within which services will be provided
4. the responsibilities of both parties
5. escalation procedures in case of performance deficiencies

#### b) Management elements

1. how service effectiveness will be tracked

2. how information about service effectiveness will be reported and addressed
3. how service-related disagreements will be resolved
4. how the parties will review and revise the SLA- Conditions warranting change; Change frequency and Change procedures

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Assignment of work to PSUs **should be taken as Project Management Consultancy (PMC) and the concerned PSU shall be treated as consultancy firm. Relevant methods (QCBS, LCS etc) for Procurement of Consultancy will be applicable.**

# Chapter - VI

# General Clauses



## 6.1 Supplier Relationship Management

### 6.1.1 Code of Integrity for Public Procurement (CIPP)

The bidders/ suppliers should be asked to sign a declaration about abiding by a Code of Integrity for Public Procurement, with a warning that, in case of any transgression of this code, bidders name is not only liable to be removed from the list of registered suppliers, 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.

- 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 IFCI, 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 IFCI who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from IFCI with an intent to gain unfair advantage in the procurement process or for personal gain; and
- vi) **"Obstructive practice"**: materially impede IFCI'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 IFCI's rights of audit or access to information;

#### Obligations for Proactive Disclosures

- i) IFCI as well as bidders, suppliers, contractors and consultants, are obliged under Code of Integrity for Public Procurement to suo-moto proactively declare any conflicts of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other IFCI. 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 IFCI. 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.

### **Punitive Provisions**

Without prejudice to and in addition to the rights of IFCI to other penal provisions as per the bid documents or contract, if IFCI comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, IFCI 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 IFCI,;
  - 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 IFCI along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
  - a) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of IFCI 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.

#### **6.1.2 Integrity Pact (IP)**

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

Ministry of Finance, Department of Expenditure have mandated IFCI 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 approved by the Board of Directors. As guidance, the threshold should be such as to cover bulk (80-90% - eighty to ninety percent by value) of its procurement expenditure.

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

- 1) Integrity pact forms part of the RFP documents. Accordingly, all the bidders are bound to enter an integrity pact with IFCI Limited along with their bid documents for contract having value more than ₹10 Lakh (exclusive of taxes)
- 2) Promise on the part of IFCI to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- 3) Promise on the part of bidders not to offer any benefit to the employees of IFCI not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- 4) 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;
- 5) 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;
- 6) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- 7) Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- 8) 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;
- 9) Integrity Pact lays down the punitive actions for any violation;
- 10) **In tenders meeting the criteria of threshold value/ nature of procurement:**  
Integrity Pact clause and format should be included in the Bid Documents. Each page of such Integrity pact proforma would be duly signed by Purchaser’s competent signatory. All pages of the Integrity Pact are to be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e. who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and shall be rejected straightway.
- 11) Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs)

**Appointment of IEMs** - Public Sector Undertakings 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, recommend 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).

**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 IFCI, at the earliest. The Monitors would also inform IFCI, 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 IFCI. 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 IFCI 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.

### 6.1.3 Development of New Sources and Registration of Suppliers

Ensuring an up-to-date and current list of registered, capable and competent suppliers facilitates efficiency, economy and promotion of competition in public procurement, especially where open tendering is not resorted to. The list may be referred to while floating a limited tender/ local purchase/ direct contracting. For such tenders, it may be possible to skip bidder qualification so as to avoid unnecessary repetition/duplication of records thereby saving time, especially in the case of emergency procurement. *For goods and services not available on GeM*, Head of Department/ ROs may register suppliers of goods and services which are specifically required by that Department/ RO, periodically. Registration of the supplier should be done following a fair, transparent and reasonable procedure and after giving due publicity. Such registered suppliers should be boarded on GeM as and when the item or service gets listed on GeM.

All Department/ ROs may use such lists prepared by other PSUs/Govt Departments as and when necessary. Registered/ enlisted/ empanelled suppliers are ordinarily exempted from furnishing earnest money deposit/ bid security with their tenders in tenders for items, and Monetary Limits for which they are registered. The list of registered suppliers for the subject matter of procurement be exhibited on the Central Public Procurement Portal and websites of IFCI/ e-procurement/ portals.

## Categories for Registration

In case of procurement of goods, the Administrative Department shall register firms as suppliers of goods in different trade groups of goods in the following broad categories:

- i) Manufacturers, who supply indigenous items;
- ii) Agents/distributors of such manufacturers, who desire to market their production only through their agents;
- iii) Foreign manufacturers with/without their accredited agent in India;
- iv) Stockists of imported spares or other specified items; and
- v) Suppliers of imported goods as are having regular arrangement with foreign manufacturers.

One of the main prerequisites for registration as a manufacturer is that the firm should possess its own in-house testing facilities. In case of MSE units, the firm need not have its own testing facilities but regular arrangements with other reputed Government or Government-approved or private agencies in its area for testing of products. Before the manufacturer is included in the list of registered suppliers, IFCI shall verify the bona fides and standing of the firm. IFCI may also seek assistance from the inspection wing of other inspecting agencies. In case of firms having an established quality maintenance system with ISO 9001- 2000 certification (latest version) by authorised agencies, IFCI may consider registration of such firms without carrying out capacity assessment.

### 6.1.4 Debarment of Suppliers

Registration of suppliers and their eligibility to participate in IFCI's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Following will be considered regarding 'Debarment from Bidding':-

- i. A bidder shall be debarred if he has been convicted of an offence- a) under the Prevention of Corruption Act, 1988; or (b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.*
- ii. A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any IFCI procurement for a period not exceeding three years commencing from the date of debarment.*
- iii. IFCI 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 IFCI will maintain such list which will also be displayed on IFCI's website.*
- iv. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment*

## Definitions

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

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

### **Debarment by IFCI**

Orders for Debarment of a firm(s) shall be passed by a IFCI, keeping in view 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.
- 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 IFCI, warrants debarment, for the reasons like supply of substandard material, non-supply of material, abandonment of works, substandard quality of works, failure to abide "Bid Securing Declaration" etc.
- iv) IFCI 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).
- v) Department/ RO 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 C&OC.

### **Other Provisions**

- 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 IFCI. 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 IFCI.
  - 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 IFCI. 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.

### **Safeguarding IFCI's Interests during debarment of suppliers**

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

#### **6.1.5 Electronic Reverse Auction (RA)**

"Electronic reverse auction" (e-RA) is an online real-time purchasing technique to select the successful bid, which involves presentation by bidders of successively lowered bids during a scheduled period of time.

In e-RA, the bidders who are ascertained to be qualified & responsive to the bidding conditions, unless otherwise restricted, shall be eligible to participate in the e-RA process. For this purpose, provision for e-RA shall be provided in the bidding document. In the normal course, post qualification method of bidding shall be followed for procurement. Under this method, QR data/details shall be sought along with the bids to ascertain the QR compliance of the bidders. For the procurement which is non-standard, non-regular or non-repetitive or in other cases, if it is considered appropriate, prequalification method of bidding may be followed. For the procurement particularly for vendor development, new areas including those areas where it is difficult to anticipate probable bidders and level of participation, Expression of Interest (EOI) may be invited. In the EOI only the basic QR for 'Technical Experience' and/or 'Financial Position' may be specified. Further, wherever considered appropriate, the Applicant complying with the QR may be allotted marks on different attributes and only those Applicant who obtain at least the minimum specified marks or those who

are ranked higher (say top 6), be considered for inviting bids. However, the methodology for marking must be specified in the Request for EOI.

Wherever the methodology for marking is not applicable, bids shall be invited from all the applicants complying with the basic QR. Award against bids invited under this process shall be considered as award against Open Tenders for all purposes. For certain procurement including for TBCB procurement, it may be considered appropriate to empanel contractors/ vendors by inviting Requests for Empanelment (RfE). In such case, only the basic QR shall be specified for empanelment. Further the maximum value of contract for which bids would be invited from the empanelled parties, subject to their meeting the qualifying criteria for that contract must be indicated in the RfE along with the indicative QR.

Based on the requests received, the Applicants be empanelled for the procurement and as and when the need for the procurement arises, bids for the procurement be invited from the empanelled parties. It shall be ensured that such empanelment is carried out independently and updated on regular basis as would be decided as per procedure and only such applicant who are considered to have the capacity and capability to execute the contract be empanelled. Award against bids invited under this process shall be considered as award against Open Tenders.

## 6.2 Other Provisions

### 6.2.1 Bid Security/Earnest Money Deposit (EMD)

To safe guard against a bidder's withdrawing or altering its/ his bid during the bid validity period in the case of advertised (OTE and GTE tenders) or limited tender enquiry Bid Security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids except Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organisation or the concerned Ministry of Department or Start-ups as recognized by Department for Promotion of Industry and Internal Trade (DPIIT). The bidders should be asked to furnish bid security along with their bids. Amount, of bid security should ordinarily range between two to five per cent of the estimated value of the goods to be procured. The amount of bid security, rounded off to the nearest thousands of Rupees, as determined by IFCI, is to be indicated in the bidding documents. The bid security may be obtained in the form of Insurance Surety Bonds, account payee demand draft, fixed deposit receipt, or banker's cheque or Bank Guarantee from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects. In case the bid security is more than a threshold (Rupees five lakh) it may be in the form of a bank guarantee issued/confirmed from any of the scheduled commercial bank in India in an acceptable form ) and in case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on. The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period.

The bid security is normally to remain valid for a period of 45 (forty-five) days beyond the final bid validity period. In exceptional cases, in place of a Bid security, IFCI after seeking approval of the competent authority may consider asking Bidders to sign a Bid securing declaration accepting that if they withdraw or modify their Bids during the period of validity, or if they are



awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids/request for proposals document, they will be suspended for the period of time specified in the request for bids/request for proposals document from being eligible to submit Bids/Proposals for contracts with IFCI.

In appropriate cases, Submission of the bid security may be waived with the Competent Authority's (CA's) approval, especially in the case of indigenisation/development tenders, limited tenders and procurements directly from the manufacturer or authorised agents.

MSEs are exempt from payment of EMD. In case the tenderer falls in this category, the bidder should furnish a certified copy of its valid registration details. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only.

A bidder's bid security will be forfeited if the bidder withdraws or amends its/his tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required performance security within the specified period.

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

### 6.2.2. Performance Security/Guarantee

- i) To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance security should be for an amount of five (5) to ten (10) per cent of the value of the contract as specified in the bid documents [The value has been reduced to three (3) percent till 31.03.2023]. Performance security may be furnished in the form of Insurance Surety Bond, account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects. Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) - an international convention regulating international securities. Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable. Submission of Performance Security is not necessary for a contract value upto Rupees (one) lakh.
- ii) Performance Security is to be furnished by a specified date (generally 14(fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond

the date of completion of all contractual obligations of the supplier, including warranty obligations.

- iii) The performance security will be forfeited and credited to IFCI's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60(sixty) days of completion of all such obligations including the warranty under the contract. Return of Bid/ Performance Securities should be monitored by the senior officers and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement Portal, so make the process transparent and visible.
- iv) On account of the COVID-19 pandemic, that caused slowdown in economy, it is decided to reduce Performance Security from existing five to ten percent to three (3) percent of the value of the contract for all existing contracts till 31.03.2023. However, the benefit of the reduced Performance Security will not be given in the contracts under dispute wherein arbitration/ court proceedings have been already started or are contemplated. All tenders/ contracts issued/ concluded till 31.03.2023 should also have the provision of reduced Performance Security. In all contracts, where Performance Security has been reduced to three percent, the reduced percentage shall continue for the entire duration of the contract and there should be no subsequent increase of Performance Security even beyond 31.03.2023. Similarly, in all contracts entered into with the reduced percentage of Performance Security of three percent, there will be no subsequent increase in Performance Security even beyond 31.03.2023. Where, there is compelling circumstances to ask for Performance Security in excess of three percent as stipulated above, the same should be done only with the approval of the next higher authority to the authority competent to finalise the particular tender. Specific reasons justifying the exception shall be recorded.

### 6.2.3 Bank Guarantee

In case of works and capital equipment, there is usually a defect liability/warranty clause against defects arising from design, material, workmanship or any omission on part of the vendor/ contractor during a specified period of months from the date of commissioning or from the date of dispatch in case of goods - whichever is earlier. In such cases, the performance guarantee is to be valid upto **60** (sixty) days beyond the warranty period. It is normally permissible in such a situation to allow Performance guarantee to be valid upto **60** (sixty) days beyond delivery/ commissioning period and the contractor may be allowed to submit a fresh Warranty Bank Guarantee of 10 (ten) per cent of the value of the goods in the currency of the contract valid upto **60** (sixty) days beyond the Warranty period. In such cases, the performance guarantee is to be returned only after satisfactory delivery/ commissioning and receipt of such a warranty bank guarantee. In procurement of other than Capital Equipment Goods (and in case of low value Capital Goods - say upto Rupees one Lakh), Warranty Clause is not called for.

### 6.2.4 Verification of Bank Guarantees

Bank guarantees submitted by the tenderers/suppliers as EMD/performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance

security/advance payments and for various other purposes are as follows:

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

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

#### **6.2.5 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments**

A suitable mechanism for safe custody and monitoring of EMDs and performance securities and other instruments should be evolved and implemented. The Department/RO shall also make institutional arrangements for taking all necessary actions on time for extension or encashment or refund of EMDs and performance securities, as the case may be. Monitoring should also include a monthly review of all bank guarantees and other instruments expiring in next three months, along with a review of the progress of the corresponding contracts. Extension of bank guarantees and other instruments, where warranted, should be sought immediately and implemented within their validity period. Bank Guarantee should never be handed over to the supplier for propose of extension of validity. Such a system of monitoring of securities and other instruments may be considered to be computerised with automatic alerts about lapse of validity etc.

#### **6.2.6 Payment Clause**

The elements of price included in the quotation of a tenderer depend on the nature of the goods to be supplied and the allied services to be performed, location of the supplier, location of the user, terms of delivery, extant rules and regulations about taxes, duties, and so on, of the seller's country and the buyer's country.

In case of indigenus goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, excise duty and other taxes and duties as applicable. In case of imported goods, in addition to similar elements of price as above (other than excise duty and taxes), there may be elements of custom duty, import duty, landing and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or imported), there may be cost

elements towards installation and commissioning, operator's training, and so on.

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

While claiming the payment, the supplier should also certify in the bill that the payment being claimed is strictly in terms of the contract and all obligations on the part of the supplier for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

- i) **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up; and
- ii) **Payment to Suppliers:** In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions.:
  - a) As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. Any foreseeable payment delays should be communicated to the suppliers in advance;
  - b) Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, IFCI must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.
  - c) Release of payment and settlement of the final bill should be processed as per the terms and conditions of the contract;
  - d) No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed;
- iii) Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure that the payment matches the actual performance;
- iv) While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment;

## 6.2.7 Terms of Payment

Where the terms of delivery are FOR Dispatching Station, the payment terms, depending on the value and nature of the goods, mode of transportation, and so on, maybe 60 to 90 (sixty to ninety) per cent on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.

Where the terms of delivery is FOR destination/delivery at site, the usual payment term is 100 (hundred) per cent on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.

Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are generally:

- i) For a contract with terms of delivery as FOR dispatching station -- 60 (sixty) per cent on proof of dispatch along with other specified documents, 30 (thirty) per cent on receipt of the goods at site by the consignee and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee; and
- ii) For a contract with terms of delivery as FOR destination/delivery at site -- 90 (ninety) per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee.

Note: Generally (especially for goods requiring installation and commissioning at site by the supplier), the desirable terms of delivery are FOR destination/delivery at site, so that the supplier remains responsible for safe arrival of the ordered goods at the site. Therefore, unless otherwise decided ex-works or FOR dispatching station terms should be avoided.

## 6.2.8 Advance Payment

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:

- i) Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
- ii) Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;

Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordinance factories:

- a) Thirty per cent of the contract value to private firms;
- b) Forty per cent of the contract value to a state or central Government agency or PSU; or
- c) In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- d) In exceptional cases, IFCI may relax the ceilings mentioned above. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so

on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms and ammunitions from ordinance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case-to-case basis.

### 6.2.9 Insurance

In every case where advance payment or payment against dispatch documents is to be made or LC is to be opened, the condition of insurance should invariably be incorporated in the terms and conditions. Wherever necessary, the goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, insurance may cover "all risks" including war risks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by IFCI for receiving the goods at the destination. Where delivery of imported goods is required by the purchaser on CIF/CIP basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on FOB/FAS basis, marine/air insurance shall be the responsibility of the purchaser.

#### 6.2.10 Firm Price *vis-a-vis* Variable 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 Variation Clause (PVC) may be stipulated for items with inputs (raw material, labour, etc.), prone to short-term price volatility - especially for critical or high value items - otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. **For high value (more than Rupees one crore) tenders with deliveries longer than 18 (eighteen) months, PVC may be provided to protect the purchaser's interests also.**

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. 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:

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

prevailing in that month and year. The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the time lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;

- ii) The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
- iii) The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- iv) Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- v) Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- vi) No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
- vii) Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases offeree majeure or defaults;
- viii) Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- ix) The clause should also contain the mode and terms of payment of the price variation admissible; and
- x) The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- xi) 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."*
- xii) 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.

### 6.2.11 Statutory Duties and Taxes on Domestic Goods

The duties and taxes including excise duty and VAT/GST levied by the Government vary from product to product. Unless a different intention appears from the terms of the contract, statutory variation in duties or taxes are to be borne by the buyer (IFCI) as per the section 64A of the Sales of Goods Act, 1930. As a general policy, the statutory variations in such duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/re-fixed delivery period of the contract so that both the supplier and purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

*(Note: Re-fixed delivery period means the fresh delivery period which is arrived at by recasting the original contractual delivery period after taking care of the lost period, for which the supplier was not responsible.)*

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations thereon should be entertained after opening of tenders and during the currency of the resultant contract. If a tenderer chooses to quote price inclusive of excise duty/ Sales Tax/ VAT/GST, it should be presumed that the duties/ taxes so included is firm unless he has clearly indicated the rate of duties/ taxes included in his price and also sought adjustment on account of statutory variation thereon. If a tenderer is exempted from payment of excise duty upto a certain value of turnover, he should clearly state that no excise duty will be charged by him upto the limit of exemption enjoyed by him. If any concession is available in regard to rate/quantum of Central Excise Duty, it should be brought out clearly. It should also be clearly indicated whether increase in rate of excise duty due to increase in turn over will be borne by the tenderer. Stipulation like, "excise duty is presently not applicable but the same will be charged if it becomes leviable later on", should not be accepted unless in such cases it is clearly stated by the tenderer that excise duty will not be charged by him even if the same becomes applicable later on due to increase in turnover. If a tenderer fails to comply with this requirement, his quoted price shall be loaded with the quantum of maximum excise duty which is normally applicable on the item in question for the purpose of comparison with the prices of other tenderers. The tenderers should indicate in their offer whether they are availing VAT/ Tax/GST credits or not. If they are availing VAT/ Tax/GST credits, they should take into account the entire credit on inputs available under such Schemes while quoting the price and furnish a declaration to this effect along with a confirmation that any further benefit available in future on account of such schemes would be passed on to the purchaser.

Note: Sales tax/ VAT are not levied on transactions of sale in the course of import. Categories of cases constituting sale in course of import are:

- i) Where the movement of goods from the foreign country to India is occasioned directly as a result of the sale;
- ii) Where the Indian supplier acts as the agent of the foreign manufacturer in the agreement of the sale.

### **Octroi and Local Taxes**



In case the goods supplied against contracts placed by IFCI are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the supplier should obtain the exemption certificate from the Purchasing Department to avoid payment of such levies and taxes.

In case such payments are not exempted (or are demanded in spite of the exemption certificate), the supplier should make the payment to avoid delay in supplies and forward the receipt to the Purchasing Department for reimbursement and for further necessary action.

### 6.2.12 Duties/Taxes on Raw Materials

IFCI is not liable for any claim from the supplier on account of fresh imposition and/or increase (including statutory increase) in excise duty, custom duty, sales tax, and so on, on raw materials and/or components used directly in the manufacture of the contracted goods taking place during the pendency of the contract, unless such liability is specifically agreed to in terms of the contract. A clause to this effect should also form part of the tender documents.

### 6.2.13 Incoterms Terms of Delivery

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

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the 'title of goods' at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods

pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

- i) Control and care of the goods while in transit;
- ii) Carrier selection, transfers and related issues;
- iii) Costs of freight, insurance, taxes, duties and forwarding fees; and
- iv) Documentation, problem resolution and other related issues.

In use since 1936, Incoterms have been revised in 2010. Out of the 11 Incoterms options, seven apply to all modes of transportation whereas four apply only to water transportation.

The options range from one extreme - the buyer takes full responsibility from point of departure - to the other extreme: the seller is responsible all the way through delivery to the buyer's location. It is easiest to understand terms as per their nomenclature groupings: 'ex' group of terms where the buyer takes full responsibility from point of departure; 'free' group of terms in which the freight is not paid by the seller; 'C' group of terms in which the freight is paid by the seller; and 'delivered' group of terms where the seller takes full responsibility from an intermediate point to an arrival point.

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

#### **6.2.14 Deduction of Income Tax, Service Tax/GST, and so on, at Source from Payments to Suppliers**

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

#### **6.2.15 Refund from Supplier**

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

#### **6.2.16 Payment against Time Barred Claims**

The paying authority is to ensure that no payment against such time barred claim is made till a decision has been taken in this regard by the Competent Authority.

### 6.2.17 Sources and Verification of Bank Guarantees

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

Bank guarantees submitted by the tenderers/ contractors as EMD/ performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/ contractors against EMD/ performance security/ advance payments and for various other purposes are as follows:

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

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

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

### 6.2.18 Goods and Services Tax (GST)

- i. A detailed clause regarding GST may be included in the bid documents, stipulating inter-alia that all the bidders/ tenders should ensure that they are GST compliant and their quoted tax structure / rates are as per GST Law. While before enactment of GST, the bid prices were

normally inclusive of applicable taxes, now after its enactment, as per the GST Act the bid and contract must show the GST Tax Rates and GST Amount explicitly and separate from the bid/ contract price (exclusive of GST). Asking for a bid-price inclusive of taxes/ GST would be a violation of the GST Act. Bid format may be suitably modified accordingly. In the transition period, any variation in tax structure/rate due to introduction of GST shall be dealt with under Statutory Variation Clause. Ministries/ Departments may follow the procedure as mentioned below while dealing with contractor's payment, post GST promulgation:

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

Let Z = Gross amount of work executed on the basis of quantum of work executed at the contracted rates.

R = Percentage rate of GST for that HSN code

Y = GST amount as per applicable GST rate for that HSN code.

X - Amount of work executed excluding GST amount.

**Then, Z = X + Y;**

**Where Y = X\*R/100**

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

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

“Amount of work executed excluding GST amount” (i.e. “X” as mentioned in para (iii) above) duly deducting all other leviable taxes like I/Tax, labour cess, royalty etc. as applicable. Department/RO shall deposit ‘GST amount’ as well as all other taxes deducted to concerned authority. Pre-GST contracts need to be viewed in the light of the clauses of the contracts already signed and provision for change in law.

### **6.2.19 Disputes and Conflicts**

Normally, there should not be any scope for dispute between IFCI 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 IFCI and contractor. When a dispute/ difference arises, both IFCI 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.

If a dispute of any kind, whatsoever, arises between IFCI 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.

### **6.2.20 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.

### **6.2.21 Arbitration**

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

arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be referred to adjudication through arbitration.

It is therefore essential that the Project Organisation of IFCI 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.

### 6.2.22 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) User Department / RO should monitor the success rate of appealing against arbitration awards. 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 IFCI.

### 6.2.23 Arbitration Awards

In cases where the IFCI 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 IFCI 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 IFCI should the subsequent court order require refund of the said amount.

### 6.2.24 Breach of Contract, Remedies and Termination

#### 6.2.24.1 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 IFCI 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 IFCI exceeds that due to the contractor, the difference will be a debt payable to IFCI. The CA may terminate a contract in the following cases. IFCI 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.

#### 6.2.24.2 Cancellation of Contract for Default

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

- 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.

#### **6.2.24.3 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 IFCI.

#### **6.2.25 Termination of Contract for IFCI's Failure or Convenience**

After placement of the contract, there may be an unforeseen situation compelling IFCI 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 (IFCI's) convenience, inter alia, indicating the date with effect from which the termination will to become effective. This is not IFCI'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 IFCI'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.



### 6.2.26 Consideration of Lack of Competition in OTE/ GTE and LTE

Sometimes, against advertised/limited tender cases, IFCI may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid - a situation referred to as 'Single Offer'. Such situation of 'Single Offer' is to be treated as Single Tender. 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. Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:

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

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

Unsolicited offers against LTEs should be ignored, however Ministries/ Departments should evolve a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:

- a) Inadequate Competition
- b) Non-availability of suitable quotations from registered vendors
- c) Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

### 6.2.27 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender

- i) IFCI may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:
  - a) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
  - b) when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
  - c) none of the technical Proposals meets the minimum technical qualifying score;
  - d) If effective competition is lacking. However lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para

- above also regarding receipt of a single offer).
- e) the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
  - f) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, IFCI 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 decision of IFCI 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, IFCI is first to check whether, while floating/issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly qualification criteria, and technical and commercial terms, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. If the offered/final price of the successful bidder is substantially higher (more than 15% of the cost estimate), in such a case, as an alternative to re-invitation, the feasibility of increasing the budget or scaling down the scope of services may be considered.

#### **6.2.28 Handling Dissent among Tender Committee**

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

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

In cases where the CA does not agree with the majority or unanimous recommendations of the TC, he should record his views and, if possible, firstly send it back to TC to reconsider along the lines of the tender accepting authority's views.

However, if the TC, after considering the views of the CA, sticks to its own earlier recommendations, the CA can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

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

All technical, commercial and finance officials who have contributed to the techno commercial or financial evaluation of bids, even though they may not be part of the TC

should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports.

### **6.2.30 Tender Committee Recommendations/Report**

The TC has to make formal recommendations for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. 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.

### **6.2.31 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 IFCI'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.

### **6.2.32 Minor Infirmary/ Irregularity/ Non-conformity**

During the preliminary examination, some minor infirmity and/ or irregularity and/ or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/

attachment or illegibility in a submitted document, non-submission of requisite number of copies of a document. 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 3.4.1 (iv) above) 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 IFCI'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.

### **6.2.33 Clarification of Bids/ Shortfall Documents**

During evaluation and comparison of bids, IFCI 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.

### **6.2.34 Correction of Bids**

Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered. Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear - and thereafter there should be no relaxation during evaluation. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In accordance with the corrections

as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited.

**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.

### 6.2.35 Performance Notice

A situation may arise where the supply/services has not been completed within the stipulated period due to negligence/fault of the supplier; however, the supplier has not made any request for extension of the delivery period but the contracted goods/services are still required by the purchaser and the purchaser does not want to cancel the contract at that stage. In such a case, a performance notice (also known as notice-cum-extension letter) may be issued to the supplier by suitably extending the delivery date and by imposing LD with denial clauses, and so on. The supplier's acceptance of the performance notice and further action thereof should also be processed in the same manner as mentioned above.

### 6.2.36 Denial Clause

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period.

### 6.2.37 Liquidated Damages

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as Liquidated Damages (LD). Law allows recovery of pre-estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply.

### 6.2.38 Quantum of LD

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, as agreed, the LD a sum equivalent to 0.5 (half) per cent of the prices of any portion of stores delivered late, for each week or part thereof of delay. The total damages shall not exceed 10 (ten) per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract. In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of

delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

Government establishments/Departments, as distinct from PSUs, that execute contract work should not be dealt with as ordinary contractors and not generally be penalised for late delivery and claims for loss on risk-purchase should not be enforced against them. Serious cases of defaults should, however, be brought to the notice of the HOD or the Government Department concerned.

Relaxations allowed to Government establishments/Departments, as above, will not apply to PSUs as a matter of course. Each case should be decided on merits and the decision to waive the recovery of LDs or risk purchase expenditure should be taken on merit.

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

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

#### **6.2.39 Waiver of LD**

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA may be taken and justifications recorded.

#### **6.2.40 Handling Deliveries after the Expiry of Delivery Period**

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having being given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/denial clause.

*“Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from IFCI. The goods are being retained without prejudice to the rights of the Government of India under the terms and conditions of the*

*contract."*

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

#### **6.2.41 Breach of Contract, Remedies and Termination**

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 supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects IFCI seriously.

The purchaser or its authorised representative is not to enter into correspondence after expiry of the delivery date stipulated in the contract because such a correspondence will keep the contract alive and would amount to abrogation of the purchaser's right and remedies for delays by the contractor. This situation will not allow the purchaser to cancel the contract straight away without first serving a performance notice to the supplier. However, even after expiry of the delivery period of the contract, the purchaser may obtain information regarding past supplies, and so on, from the supplier, simultaneously making it clear to the supplier that calling of such information is not intended to keep the contract valid and it does not amount to waiving the breach and that it is without prejudice to the rights and remedies available to the purchaser under the terms of the contract. A model communication which may be issued by the purchaser to ascertain the supply position after expiry of the delivery period is given at Annexure 20. As soon as a breach of contract is noticed, a show cause notice should be issued to the contractor reserving the right to implement contractual remedies. If there is an unsatisfactory resolution, remedial action may be taken immediately. The CA may terminate a contract in the following cases.

#### **6.2.42 Cancellation of Contract for Default**

Without prejudice to any other remedy for breach of contract, such as removal from the list of registered supplier, by written notice of default sent to the supplier, the contract may be

terminated in whole or in part:

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted;
- iii) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
  - a) Forfeiture of the performance security;
  - b) Upon such terms and in such manner as it deems appropriate, goods similar to those undelivered may be procured and the supplier shall be liable for all available actions against him in terms of the contract (popularly called risk purchase); and
  - c) However, the supplier shall continue to fulfil the contract to the extent not terminated.

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

#### **6.2.43 Termination of Contract for Insolvency**

If the supplier 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 supplier, without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to IFCI.

#### **6.2.44 Termination of Contract for Convenience**

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

#### **6.2.45 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 retender, following the normal tendering process.
- ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
  - iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
  - iv) After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
    - a) It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
    - b) The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure 12, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
    - c) A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure 12; and
    - d) Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure 13. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

#### 6.2.46 Force Majeure

**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.

#### **6.2.47 Empanelment of Vendor**

To meet Operational requirement of IFCI, Department Head/RO Heads may empanel vendors for their routine requirements. Such empanelment can be done by Local Purchase Committee and at least three vendors based should be empanelled. Department/RO can procure Goods/ Services/ Works/ Consultants worth ₹25 Lakh on each occasion by inviting Limited Tender Bid (Single Envelop). Minimum 15 days shall be given to the empanelled vendors to submit their bid.

#### **6.2.48 Vendor Payments**

Vendor invoice would be submitted to User Department. Payment to vendor would be processed by User Department as per timelines mentioned in GEM guidelines and/or Procurement Manuals.

## ACRONYMS

Sr.	Abbreviation	Description
1	DoP	Delegation of Power
2	CVC	Central Vigilance Commission
3	IT	Information Technology
4	RFP	Request for Proposal
5	RFQ	Request for Quotation
6	EOI	Expression of Interest
7	OEM	Original Equipment Manufacturer
8	E - Tender	Electronic Tender
9	ORA	Online Reverse Auction
10	GFR	General Financial Rules
11	MSME	Micro, Small and Medium Enterprise
12	DGS&D	Directorate General of Supplies and Disposals
13	EMD	Earnest Money Deposit
14	LD	Liquidated Damages
15	BG	Bank Guarantee
16	SC	Survey Committee

## Appendix 1

### LIST OF ITEMS RESERVED FOR PURCHASE FROM SMALL SCALE INDUSTRIAL UNITS INCLUDING HANDICRAFT SECTOR.

#### Sl. Item Description

1. AAC/and ACSR Conductor upto 19 strands
2. Agricultural Implements
  - (a) Hand Operated tools and implements
  - (b) Animal driven implements
3. Air/Room Coolers
4. Aluminum builder's hardware
5. Ambulance stretcher
6. Ammeters/ohm meter/Volt meter (Electro magnetic upto Class I accuracy)
7. Anklets Web Khaki
8. Augur (Carpenters)
9. Automobile Head lights Assembly
10. Badges cloth embroidered and metals
11. Bags of all types i.e. made of leather, cotton, canvas and jute etc. including kit bags, mail bags, sleeping bags and water-proof bag.
12. Bandage cloth
13. Barbed Wire
14. Basket cane (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)
15. Bath tubs
16. Battery Charger
17. Battery Eliminator
18. Beam Scales (upto 1.5 tons)
19. Belt leather and straps
20. Bench Vices
21. Bituminous Paints
22. Blotting Paper
23. Bolts and Nuts
24. Bolts Sliding
25. Bone Meal
26. Boot Polish
27. Boots and Shoes of all types including canvas shoes
28. Bowls
29. Boxes Leather
30. Boxes made of metal
31. Braces
32. Brackets other than those used in Railways
33. Brass Wire
34. Brief Cases (other than moulded luggage)

35. Brooms
36. Brushes of all types
37. Buckets of all types
38. Button of all types
39. Candle Wax Carriage
40. Cane Valves/stock valves (for water fittings only)
41. Cans metallic (for milk and measuring)
42. Canvas Products :
  - (a) Water Proof Deliver, Bags to spec. No. IS - 1422/70
  - (b) Bonnet Covers and Radiators Muff. to spec. Drg. Lv 7/NSN/IA/130295
43. Capes Cotton and Woollen
44. Capes Waterproof
45. Castor Oil
46. Ceiling roses upto 15 amps
47. Centrifugal steel plate blowers
48. Centrifugal Pumps suction and delivery 150 mm. x 150 mm
49. Chaff Cutter Blade
50. Chains lashing
51. Chappals and sandals
52. Chamois Leather
53. Chokes for light fitting
54. Chrome Tanned leather (Semi-finished Buffalo and Cow)
55. Circlips
56. Claw Bars and Wires
57. Cleaning Powder
58. Clinical Thermometers
59. Cloth Covers
60. Cloth Jaconet
61. Cloth Sponge
62. Coir fibre and Coir yarn
63. Coir mattress cushions and matting
64. Coir Rope hawserlaid
65. Community Radio Receivers
66. Conduit pipes
67. Copper nail
68. Copper Napthenate
69. Copper sulphate
70. Cord Twine Maker
71. Cordage Others
72. Corrugated Paper Board and Boxes
73. Cotton Absorbent
74. Cotton Belts
75. Cotton Carriers
76. Cotton Cases
77. Cotton Cord Twine

78. Cotton Hosiery
79. Cotton Packs
80. Cotton Pouches
81. Cotton Ropes
82. Cotton Singlets
83. Cotton Sling
84. Cotton Straps
85. Cotton tapes and laces
86. Cotton Wool (Non absorbent)
87. Crates Wooden and plastic
88. (a) Crucibles upto No. 200 (b) Crucibles Graphite upto No. 500 (c) Other Crucibles upto 30 kgs.
89. Cumblies and blankets
90. Curtains mosquito
91. Cutters
92. Dibutyl phthalate
93. Diesel engines upto 15 H.P
94. Dimethyl Phthalate
95. Disinfectant Fluids
96. Distribution Board upto 15 amps
97. Domestic Electric appliances as per BIS Specifications:- - Toaster Electric, Elect. Iron, Hot Plates, Elect. Mixer, Grinders, Room heaters and convectors and ovens
98. Domestic (House Wiring) P.V.C. Cables and Wires (Aluminum) Conforming to the prescribed BIS Specifications and upto 10.00 mm sq. nominal cross section
99. Drawing and Mathematical Instruments
100. Drums and Barrels
101. Dust Bins
102. Dust Shield leather
103. Dusters Cotton all types except the items required in Khadi
104. Dyes :
  - (a) Azo Dyes (Direct and Acid)
  - (b) Basic Dyes
105. Electric Call bells/buzzers/door bells
106. Electric Soldering Iron
107. Electric Transmission Line Hardware items like steel cross bars, cross arms clamps arching horn, brackets, etc
108. Electronic door bell
109. Emergency Light (Rechargeable type)
110. Enamel Wares and Enamel Utensils
111. Equipment camouflage Bamboo support
112. Exhaust Muffler
113. Expanded Metal
114. Eyelets

115. Film Polythene - including wide width film
116. Film spools and cans
117. Fire Extinguishers (wall type)
118. Foot Powder
119. French polish
120. Funnels
121. Fuse Cut outs
122. Fuse Unit
123. Garments (excluding supply from Indian Ordnance Factories)
124. Gas mantels
125. Gauze cloth
126. Gauze surgical all types
127. Ghamellas (Tasllas)
128. Glass Ampules
129. Glass and Pressed Wares
130. Glue
131. Grease Nipples and Grease guns
132. Gun cases
133. Gun Metal Bushes
134. Guntape
135. Hand drawn carts of all types
136. Hand gloves of all types
137. Hand Lamps Railways
138. Hand numbering machine
139. Hand pounded Rice (polished and unpolished)
140. Hand presses
141. Hand Pump
142. Hand Tools of all types
143. Handles wooden and bamboo (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)
144. Harness Leather
145. Hasps and Staples
146. Haver Sacks
147. Helmet Non-Metallic
148. Hide and country leather of all types
149. Hinges
150. Hob nails
151. Holdall
152. Honey
153. Horse and Mule Shoes
154. Hydraulic Jacks below 30 ton capacity
155. Insecticides Dust and Sprayers (Manual only)
156. Invalid wheeled chairs.
157. Inverter domestic type upto 5 KVA
158. Iron (dhobi)
159. Key board wooden

160. Kit Boxes
161. Kodali
162. Lace leather
163. Lamp holders
164. Lamp signal
165. Lanterns Posts and bodies
166. Lanyard
167. Latex foam sponge
168. Lathies
169. Letter Boxes
170. Lighting Arresters - upto 22 kv
171. Link Clip
172. Linseed Oil
173. Lint Plain
174. Lockers
175. Lubricators
176. L.T. Porcelain KITKAT and Fuse Grips
177. Machine Screws
178. Magnesium Sulphate
179. Mallet Wooden
180. Manhole covers
181. Measuring Tapes and Sticks
182. Metal clad switches (upto 30 Amps)
183. Metal Polish
184. Metallic containers and drums other than N.E.C. (Not elsewhere classified)
185. Metric weights
186. Microscope for normal medical use
187. Miniature bulbs (for torches only)
188. M.S. Tie Bars
189. Nail Cutters
190. Naphthalene Balls
191. Newar
192. Nickel Sulphate
193. Nylon Stocking
194. Nylon Tapes and Laces
195. Oil Bound Distemper
196. Oil Stoves (Wick stoves only)
197. Pad locks of all types
198. Paint remover
199. Palma Rosa Oil
200. Palmgur
201. Pans Lavatory Flush
202. Paper conversion products- paper bags, envelops, Ice-cream cup, paper cup and saucers and paper Plates
203. Paper Tapes (Gummed)



204. Pappads
205. Pickles and Chutney
206. Piles fabric
207. Pillows
208. Plaster of Paris
209. Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) Containers
210. Plastic cane
211. Playing Cards
212. Plugs and Sockets electric upto 15 Amp
213. Polythene bags
214. Polythene Pipes
215. Post Picket (Wooden)
216. Postal Lead seals
217. Potassium Nitrate
218. Pouches
219. Pressure Die Casting upto 0.75 kg
220. Privy Pans
221. Pulley Wire
222. PVC footwears
223. PVC pipes upto 110 mm
224. PVC Insulated Aluminium Cables (upto 120 sq. mm) (ISS:694)
225. Quilts, Razais
226. Rags
227. Railway Carriage light fittings
228. Rakes Ballast
229. Razors
230. RCC Pipes upto 1200 mm. dia
231. RCC Poles Prestressed
232. Rivets of all types
233. Rolling Shutters
234. Roof light Fittings
235. Rubber Balloons
236. Rubber Cord
237. Rubber Hoses (Unbranded)
238. Rubber Tubing (Excluding braided tubing)
239. Rubberised Garments Cap and Caps etc
240. Rust/Scale Removing composition
241. Safe meat and milk
242. Safety matches
243. Safety Pins (and other similar products like paper pins, staples pins etc.)
244. Sanitary Plumbing fittings
245. Sanitary Towels
246. Scientific Laboratory glass wares (Barring sophisticated items)
247. Scissors cutting (ordinary)

248. Screws of all types including High Tensile
249. Sheep skin all types
250. Shellac
251. Shoe laces
252. Shovels
253. Sign Boards painted
254. Silk ribbon
255. Silk Webbing
256. Skiboats and shoes
257. Sluice Valves
258. Snapfastner (Excluding 4 pcs. ones)
259. Soap Carbolic
260. Soap Curd
261. Soap Liquid
262. Soap Soft
263. Soap washing or laundry soap
264. Soap Yellow
265. Socket/pipes
266. Sodium Nitrate
267. Sodium Silicate
268. Sole leather
269. Spectacle frames
270. Spiked boot
271. Sports shoes made out of leather (for all Sports games)
272. Squirrel Cage Induction Motors upto and including 100 KW440 volts 3 phase
273. Stapling machine
274. Steel Almirah
275. Steel beds stead
276. Steel Chair
277. Steel desks
278. Steel racks/shelf
279. Steel stools
280. Steel trunks
281. Steel wool
282. Steel and aluminium windows and ventilators
283. Stockinet
284. Stone and stone quarry rollers
285. Stoneware jars
286. Stranded Wire
287. Street light fittings
288. Student Microscope
289. Studs (excluding high tensile)
290. Surgical Gloves (Except Plastic)
291. Table knives (Excluding Cutlery)
292. Tack Metallic

293. Taps
294. Tarpaulins
295. Teak fabricated round blocks
296. Tent Poles
297. Tentage Civil/Military and Salitah Jute for Tentage
298. Textiles manufactures other than N.E.C. (not elsewhere classified)
299. Tiles
300. Tin Boxes for postage stamp
301. Tin can unprinted upto 4 gallons capacity (other than can O.T.S.)
302. Tin Mess
303. Tip Boots
304. Toggle Switches
305. Toilet Rolls
306. Transformer type welding sets conforming to IS:1291/75 (upto 600 amps)
307. Transistor Radio upto 3 band
308. Transistorised Insulation - Testers
309. Trays
310. Trays for postal use
311. Trolley
312. Trollies - drinking water
313. Tubular Poles
314. Tyres and Tubes (Cycles)
315. Umbrellas
316. Utensils all types
317. Valves Metallic
318. Varnish Black Japan
319. Voltage Stablisers including C.V.T's
320. Washers all types
321. Water Proof Covers
322. Water Proof paper
323. Water tanks upto 15,000 litres capacity
324. Wax sealing
325. Waxed paper
326. Weighing Scale
327. Welded Wire mash
328. Wheel barrows
329. Whistle
330. Wicks cotton
331. Wing Shield Wipers (Arms and Blades only)
332. Wire brushes and Fibre Brushes
333. Wire Fencing and Fittings
334. Wire nails and Horse shoe nails
335. Wire nettings of gauze thicker than 100 mesh size
336. Wood Wool
337. Wooden ammunition boxes

- 338. Wooden Boards
- 339. Wooden Box for Stamps
- 340. Wooden Boxes and Cases N.E.C. (Not elsewhere classified)
- 341. Wooden Chairs
- 342. Wooden Flush Door Shutters
- 343. Wooden packing cases all sizes
- 344. Wooden pins
- 345. Wooden plugs
- 346. Wooden shelves
- 347. Wooden veneers
- 348. Woolen hosiery
- 349. Zinc Sulphate
- 350. Zip Fasteners

### HANDICRAFT ITEMS

Sl.No.	Item Description	Source of Supply
351	Cane furniture Handlooms	North Eastern Handicrafts and Development Corporation, Assam Govt. Marketing Corpn., Craft Society of Manipur, Nagaland Handicrafts and Handlooms Development Corpn.
352.	Bamboo file tray, Baskets, Pencil stand, side racks etc.	-do-
353.	Artistic Wooden Furniture	Rajasthan Small Industries Corpn., U.P. Export Corporation.
354.	Wooden paper weight, racks etc.	-do-
355.	Glass covers made of wood and grass jute	-do-
356.	Jute furniture	West Bengal Handicrafts Dev. Corpn. Jute Mfg. Development Corporation Orissa State Handicrafts Dev. Corpn.
357.	Jute bags, file cover	-do-
358.	Woolen and silk carpets	U.P. Export Corporation J and K Sale and Export Corporation

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## Appendix 2

### Instruction to Bidders (ITB) and AITB

ITB contain all relevant information as well as guidance to the prospective tenderers regarding all aspects of obtaining tender documents and preparing and submitting a responsive bid. It also mentions the process of establishing the eligibility of the tenderer as well as evaluation and comparison of tenders and award of contract. ITB should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on. Instead of modifying ITB every time, any changes warranted by special circumstances may be indicated with the prior approval of CA on a separate Appendix to ITB (AITB) and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB will supersede the corresponding provisions in the ITB.

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

#### i) Purchase Preference Policies

If the purchaser intends to give a purchase preference in line with current Government policies, this fact must be declared in the ITB/AITB and in NIT as well.

#### ii) Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may notify to Procuring Entity in writing, well before the due date of submission of bids, and a response will be sent in writing to the clarifications sought prior to the date of opening of the tenders. Copies of the query and clarification shall be sent to all prospective bidders who have received the tender documents.

#### iii) **Amendment of Tender Documents (*Rule 173 (iii) of GFR 2017*)**

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents

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

#### iv) Bid Validity

A bid shall remain valid for the period mentioned in the ITB/ AITB [normally 75 (seventy-five) days for OTE and 90 (ninety) days for GTE]. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided

shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

v) Sealing and Marking of Tenders

The tender document is to indicate the total number of tender sets (for example, in duplicate or in triplicate, and so on) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "original", "duplicate," and so on, and also printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the purchaser will not assume any responsibility for its misplacement, premature opening, late opening, and so on. All the above instructions are to be suitably incorporated in the tender documents.

vi) Withdrawal, Substitution and Modification of Tenders

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/ EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

vii) Eligibility/Evaluation/Qualification Criteria

If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB/AITB or as a separate section of the tender document.

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

The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (*Rule 173 (i) of GFR 2017*). As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry & Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.

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

qualification for reasons unrelated to its capability and resources to successfully perform the contract.

viii) OEM/Authorised Dealer/Agents of Supplier

Except in case of Commercially-Off-the-Shelf (COTS) items, when a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product as per formats given in SBD. This is necessary to ensure quotation from a responsible party offering genuine product, also backed by a warranty obligation from the concerned manufacturer. In the tender, either the manufacturer or its authorised dealer can be considered as valid bidders.

In case of large contracts, especially capital equipment, the manufacturer's authorisation must be insisted upon on a tender specific basis, not general authorisation/dealership, by so declaring in the bid documents clearly.

In cases where the manufacturer has submitted the bid, the bids of its authorised dealer will not be considered and EMD will be returned.

And in case of violations, both infringing bids will be rejected.

ix) Conflict of Interest among Bidders/ Agents

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/ financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder; or
- e) Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/ sub-assembly/ Assemblies from one bidding manufacturer in more than one bid.
- f) In cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:
  1. The principal manufacturer directly or through one Indian agent on his behalf; and
  2. Indian/foreign agent on behalf of only one principal.
- g) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;

- h) In case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/ common business/ management units in same/ similar line of business.
- x) **Schedule of Requirements**

This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/qualifications/financial bids would be on a schedule-by-schedule basis or on the basis of a total of all schedules put together.

- xi) **Quotation Received from Dealers/Agents for Items not Manufactured by Them**

When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

- xii) **Special Conditions in GTE Procurements**

- a) **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies - US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees- except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.
- b) **Agency Commission:** The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the bid) between the bidder and the Indian Agent. The Indian Agent will be required to submit a certificate along with their Agency Commission bill, confirming that the amount claimed as Agency Commission in the bill has been spent/will be spent, strictly to render services to the foreign Principal, in terms of the Agency Agreement. The Purchaser or their authorized agencies and/or any other authority of the Government of India shall have rights to examine the books of the Indian Agent and defects or misrepresentations in respect of the afore indicated confirmation coming to light during such examinations will make the foreign Principal (i.e. the Contractor) and their Indian Agent liable to be banned/suspended from having business dealings with the Purchaser, following laid down procedures for such banning/suspension of business dealings.
- c) **Delivery Terms:** The delivery terms are to be expressed in terms of Incoterms. As per the revised policy of the Government, all Public Procurement import contracts involving (Ocean freight of dry or liquid bulk cargoes) are to be finalized only on FOB (Free on Board)/ FAS (Free Alongside Ship) basis and in case of any departure there-from, prior approval of the concerned administrative Ministry/ Department may be obtained. However imports involving ocean freight of general liner:



cargoes, project cargoes, heavy lift, container, break bulk cargoes etc. can now be made on FOB (Free on Board)/ FAS (Free Alongside Ship) or CFR (Cost & Freight)/ CIF(Cost, Insurance & Freight) basis. All importing Government Departments/ PSUs are now allowed to make their own shipping arrangements without needing to route their requirements through Chartering Wing of Ministry of Shipping. As per the extant directive of the Government, airlifting of imported goods from abroad will be done only through the national carrier, that is, Air India, wherever applicable. However, before processing any contract involving import of goods through air, contemporary instructions in this regard may be ascertained and followed; and

- d) **Insurance:** Wherever necessary, the goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the contract. If considered necessary, the insurance may be done for coverage on an "all risks" basis including warrisks and strike clauses. The amount to be covered under insurance should be sufficient to take care of the overall expenditure to be incurred by the purchaser for receiving the goods at the destination. Insurance of imported goods/equipment would need to be arranged on a very selective basis and only for cases where the value of individual shipment is expected to be in excess of Rupees five crore. Procuring Entities who are entering into large number of imports contracts, may enter into annual Insurance arrangements for all imports during the year with Insurance Companies, instead of insurance for each individual imports separately on the basis of "Open Cover (all Risk)". Where delivery of imported goods is required by the purchaser on Cost Insurance and Freight/Carriage and Insurance Paid (CIF/CIP) basis, the supplier shall arrange and pay for marine/air insurance, making the purchaser the beneficiary. Where delivery is on Free On Board/ Free Alongside Ship (FOB/FAS) basis, marine/air insurance shall be the responsibility of the purchaser