



सत्यमेव जयते  
Finance Department  
Government of Assam



# ASSAM FINANCE LEARNING

## Public Procurement Modules

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## Fundamentals of Public Procurement and Basics of Contracts

The following topics have been covered in this Module:

- Introduction to Public Procurement;
- Public Procurement Policies and Principles;
- Fundamentals of formation of a Contract and vitiation of Contract;
- Overview of Procurement Act & Rules;
- Procurement Lifecycle;
- Role & Composition of various of Committees;
- Approval Processes.

### 1. Introduction to Public Procurement:

#### 1.1 What is Procurement?

1.1.1 As per the Section 2(u) of the Assam Public Procurement Act, 2017 the 'Procurement' or 'Public Procurement' means the acquisition by purchase, lease, license or otherwise of goods, works or services including award of Public Private Partnership projects, by a procuring entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration, and 'procure' or 'procured' shall be construed accordingly.

1.1.2 Procurement is done for meeting certain needs. Some organisations use the term procurement only to refer to the actual buying while others refer to the entire process that leads up to the purchase as procurement

#### Examples:

*Think of certain activities of public importance getting affected for the want of timely availability of goods, services and works of right quality and quantity. Lack of medical equipment would affect public health services. Delay in construction of school building would adversely affect education to children. Lack of roads would adversely affect connectivity and transportation system in the State and affect the economy. Non-availability of quality emergency ambulance services within the golden hours would cause loss of human life. Non-procurement or procurement of not of quality seeds for timely public distribution would adversely affect overall agricultural production and consequently the financial condition of the farmers.*

*With this, you would understand the importance of procurement and the vital role one play as a procurement official.*

#### 1.2 Can you now attempt to define the Procurement?

1.2.1 Procurement is the support function that encompasses the entire process of planning, tendering, selection, contracting with external party(s) for supply of goods, provisioning of services and execution of works contract in an efficient and cost effective manner.

1.2.2 A procurement process results in a contractual relationship (i.e. contractor and Contractee) between the procuring entity and the external party (i.e. supplier, service provider, consultant

or contractor as the case may be depending on the nature of procurement). The performance of the contract is guided by the terms and conditions of the contract and it is obligatory in the part of both the parties to the contract to comply it.

1.2.3 A Procuring Entity may acquire an asset in one of the following ways and accordingly contractual obligation of both the parties is defined.

- (a) Purchase: There is a buyer and seller relationship, where purchase is done against payment towards the cost of the Asset, where the ownership of the asset is transfer to Procuring entity.
- (b) Leasing: There is a lessor and lessee relationship, where the custody of the asset and right to use is with the procuring entity (Lessee) throughout the period of lease and the ownership is retained with the leasing firm (Lessor). In consideration, the lessee has to pay the lease rental at an agreed for the period of lease.
- (c) Hire Purchase: The asset can also acquired by means of hire purchase where the procuring entity does not want to pay the entire amount upfront. Normally, a part of the cost is paid at the beginning and the balance is paid over a period of time in form of instalment. And the ownership on the asset is transferred once the entire instalment is cleared. This may be used as an alternative method of financing for the asset.

1.2.4 Think of a procuring entity need a car to be used for its official purpose. Then it has four different options for its acquisition, as detailed below:

- (a) Option-1: The procuring Entity may purchase the car from the seller selected through an appropriate procurement method against full payment towards the cost of the Car. In this case the ownership of the car shall be with the Procuring Entity.
- (b) Option-2: The procuring entity may hire the car from a Travel Agency on monthly rental basis and use it for the purpose it is intended.
- (c) Option-3: The procuring entity may take the car from a leasing company on lease for an agreed period against a rental amount to be paid either monthly or quarterly basis.
- (d) Option-4: The Procuring Entity may choose to acquire the car on hire purchase. In which case it will pay only a portion of the agreed cost (say 20%) upfront and remaining amount in instalments over a period of time (say 24 months).

*(in case of Option-1 the entire cash flow outflow is done through a single transaction, however, in case of Option- 2,3 &4 the cash outflow is done through multiple transaction over a period of time)*

### 1.3 Nature of Public Procurement

1.3.1 The entire subject matters of procurement are divided in to three different categories based on their nature to have different customised approach for each category of items. They are defined as follows:

- (a) “Goods” which include all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid, or gaseous form, purchased or otherwise acquired for the use of the procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;

- (b) **“Services”** means any subject matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;
- (c) **“Works”** means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation or railway roads, highways or a building, an infrastructure, or structure or an installation or any construction work relating to excavation, drilling, installation of equipment and materials, as well as services or goods incidental or consequential to the works if the value of those services or goods does not exceed that of the works themselves.

**Explanations:**

*Suppose there are three different procurement requirement for a procuring entity as below:*

- a) Ten number of tablets for its field works for data collection during a survey exercise.*
- b) Construction of an field office*
- c) Hiring of a security service for its warehouse*

*In the above case the procuring entity has to follow different approach for above three procurements. For example In case of tablets you shall have warranty, maintenance terms and condition however in case of security services you will not have these conditions. In case of goods you can have technical and/or quality specification, whereas in case of security services you need to define instead the scope of services and role and responsibilities.*

## **1.4 Laws Governing Public Procurement**

1.4.1 The public procurement function in the State is guided by number of Acts, Rules, Regulations, Guidelines and Directives as issued or amended from time to time to bring uniformity, transparency and fairness in the procurement process. Those key Acts, Rules or Guidelines are mentioned as below:

- a) Assam Public Procurement Act, 2017 (Effective from 1st September 2021)
- b) Assam Public Procurement Rules, 2020 (Effective from 1st September 2021)
- c) Assam Financial Rules, 1939 (as amended from time to time)
- d) Delegation of Financial Power Rules, 1999
- e) Assam PWD Code for Works
- f) Government Orders & Notification issued from time to time under the Act and Rule
- g) Assam Procurement Preference Policy, 2021 (effective form January 2022)
- h) CVC Guidelines (Issued from time to time)
- i) Indian Contract Act,1872
- j) Sale of Goods Act, 1930
- k) Law of Arbitration (Arbitration and Conciliation (Amendment) Act, 2015
- l) Competition Act, 2002

*In case of an externally funded project (World Bank or External Donor) separate procurement guidelines will be issued in conformation with donor agreement.*

## 1.5 Importance of Public Procurement

- 1.5.1 Public procurement generally accounts for a large share of public expenditure in a domestic economy. It is estimated that the annual public procurement in India is to the tune of 20 to 25 percent of its GDP. Similarly, the magnitude of spending involved in public procurement in various States is also large and is estimated to be of the order of 20-25% of the State GDP. Hence, public procurement can release large financial resources by economy in this function. Even a small percent of savings would result in quite a good amount of savings per year for use in further development of the State.
- 1.5.2 The outcome of any national/State policy including “public procurement preference policy” is to promote national/regional growth. This is done by addressing inequality in society, reducing poverty and creating a society of well-educated citizens. The public spending moulded by various preferences and incentives through its procurement policies can affect the structure of the market. The procurement policy may be used to shape a more inclusive economic growth. This can be done by longer term support to weaker sectors of industry, economy and society, such as Micro, Small and Medium Enterprises, disadvantaged sections, environmental concerns, business, trade or investment etc.
- 1.5.3 Public Finance Management (PFM) deals with all aspects of resource mobilization and expenditure management in government. PFM includes revenue collection, prioritization of programs, budgetary process, efficient expenditure management and exercising controls. Public procurement is an integral and important part of PFM system. Even a minor improvement in efficiency of public procurement would result in savings and benefits to the financial management system. This can enable the PFM system to release more funds for developmental projects.
- 1.5.4 Public procurement **offers an enormous potential market for innovative products and services**. Used strategically, it can help governments boost innovation at both the national and local level and ultimately improve productivity and inclusiveness.

*Total budgetary outlay of the State of Assam for the financial year 2022-23 is Rs 1,19,551.00 Crores. More than 60% of total budgetary out i.e. Rs 72,000.00 Crores (appx) is for public procurement in form of goods, services and works.*

## 1.6 Concept of Cost and Value – Value for Money

The concept of price or cost has been further refined into Total Cost Of Ownership (TCO) or Life Cycle Cost (LCC) or Whole-of-Life (WOL) to take into account not only the initial acquisition cost but also cost of operation, maintenance and disposal during the lifetime of the external resource procured. Similarly, the concept of quality is linked to the need and is refined into the concept of value. These two, taken together, are used to develop the concept of Value for Money (VfM, also called Best Value for Money in certain contexts). VfM means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, are recyclable, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non-toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications or Terms of Reference (ToR); appropriate packaging of requirement; selection of an appropriate mode of procurement and bidding system.

Suppose a tender was floated by an procuring entity for procurement of printer for the office use. Detailed technical specification was given in the bidding document for the printer. In the price bid in addition to the cost of the printer, annual Comprehensive Maintenance Charges (CMC) for three years (post warranty period of 2 years) and the cost of printing asked. Four bids were received within the due date and time of submission and of which three bidders qualified technically. The price bids of all three technically qualified bidders were opened and comparison sheet was prepared.

(Amount in Rupees)

Sl. No	Name of the Bidder	Cost/ Unit	Post warranty maintenance CMC cost for 3years	Printing Cost per year (avg. printing of 30000 sheets/ year	Life Cycle Cost for usable life of 5 years with an average annual Printing requirement of 30000 sheets.
		1	2	3	$4=1+2+(3*5)$
1	Bidder-1	13500	6000	6000	49,500.00
2	Bidder-2	14000	7000	5000	46,000.00
3	Bidder-3	16000	8000	4000	44,000.00

Note: It has been presumed that the residual value offer 5 years of usable life is Nil for all three cases.

If only cost of procurement shall be the selection criteria then Bidder-1 shall be the winner. If Total Life Cycle Cost (TLCC) shall be the selection criteria then Bidder-3 shall be the winner. Now procuring entity has to decide which should be the preferred bidder and accordingly selection criteria has to be defined in the Bidding document.

## 2. Public Procurement Policies & Principles

### 2.1 Fundamentals Principles of Public Procurement

2.1.1 All the procuring entities as defined under APP Act, 2017 {refer Sec 3(b)} shall have the responsibility and accountability to ensure the fundamental principles of public procurement as defined below are compiled in letter and spirit:

- Effective and timely achievement of the planned outcomes of the procurement without excessive cost over-run;
- Transparency (including consistency, objectivity, predictability, openness), fairness (including appeal rights), equality (including non-discrimination) in relations with the bidders;
- Professionalism, economy and efficiency from officials involved in the process;
- Compliance with the code of integrity in public procurement as laid down by the State Government under Section 11 of the Procurement Act by the officer or the employee of a procuring entity or a person participating in a procurement process.

### 2.2 Transparency, Competition and Fairness in Procurement Process

2.2.1 All Public procurement should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and submit competitive bids with confidence. Some of the measures for ensuring the above are as follows:-



- a) The text of the bidding document should be self-contained and comprehensive without any ambiguities. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. The bidding document should contain, inter alia;
  - (i) the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience, past performance, technical capability, manufacturing facilities and financial position etc.;
  - (ii) eligibility criteria for goods indicating any legal restrictions or conditions about the origin of goods etc which may be required to be met by the successful bidder;
  - (iii) date, time and procedure of submission and opening of the bid;
  - (iv) Terms of delivery;
  - (v) Special terms affecting performance, if any.
- b) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/ or rejection of its bid.
- c) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document.
- d) The bidding document should indicate clearly that the resultant contract will be interpreted under Indian Laws.
- e) The bidders should be given reasonable time to send their bids.
- f) The specifications of the required goods should be clearly stated without any ambiguity so that the prospective bidders can send appropriate bids. In order to attract sufficient number of bidders, the specification should be general and broad based to the extent feasible. Efforts should also be made to use standard specifications which are widely known to the industry.
- g) The eligibility criteria and qualification should be reasonable and non-restrictive in nature to ensure adequate competition.
- h) Pre-bid conference: In case of complex or high value procurement involving high-end technical and quality specifications or special terms and conditions , a suitable provision is to be kept in the bidding documents for a pre-bid conference for clarifying issues and clearing doubts, if any, about the specifications and other allied technical details about the subject matter of procurement in the bidding document. The date, time and place of pre-bid conference should be indicated in the bidding document. This date should be sufficiently ahead of the due date for bid submission.
- i) Criteria for determining 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 lowest bidder should be clearly indicated in the bidding documents.
- j) Bids received should be evaluated in terms of the conditions already incorporated in the bidding documents; no new condition which was not incorporated in the bidding documents should be brought in during the evaluation of the bids. Determination of a bid's responsiveness should be based on the contents of the bid itself without recourse to extrinsic evidence.



- k) Bidders should not be permitted to alter or modify their bids after expiry of the deadline for receipt of bids.
- l) Negotiation with bidders after bid opening must be severely discouraged. Except in exceptional circumstances where it is allowed under the Act and Rule.

### 2.3. Economy, Efficiency & Professionalism in Procurement Functions

- 2.3.1 To achieve overall objectives of public procurement process it's important to bring efficiency and economy in the procurement functions through professionalism.
- 2.3.2 To reduce delay, appropriate time frame for each stage of procurement has been prescribed. Such a time frame will also make the concerned purchase officials more alert.
- 2.3.3 To minimize the time needed for decision making and placement of contract by procuring entity appropriate financial power has been delegated to the lower functionaries through a scheme of delegation. (An efficient decision making process will ensure timely availability of goods or services or infrastructure for public service)
- 2.3.4 The Procuring Entities should ensure placement of contracts within the original validity of the bids. Extension of bid validity must be discouraged and resorted to only in exceptional circumstances. *(It's not always possible to maintain the price over a longer time period due to inflation and other factors affecting cost of production, cost of construction or cost service delivery)*
- 2.3.5 The procuring entities should adopt appropriate method as prescribed in the Act & Rules to attain efficiency and economy. *(If the requirement of a item is frequent and in bulk quantity, then rate contract method shall be most appropriate. If the requirement is very high and it's not possible by one supplier to meet the entire need then parallel rate contract with one or more parties shall be advisable.)*

## 3. Fundamentals of formation of a contract and vitiation of contract:

### 3.1 Definition

As per Indian Contract Act, 1872-Section 2(h), "A contract is an agreement enforceable by law." This definition comprises two distinct aspects.

- Firstly, there has to be an agreement.
- Secondly, such an agreement must be enforceable by law. It will be enforceable as it is coupled with an obligation.

Therefore, a Contract is a combination of two obligations of 'agreement; and 'legal' obligation. Hence each contract is a unique contract.

Any agreement becomes a contract only when it is intended to meet its legal obligations. Let us now look at the composition of a contract.

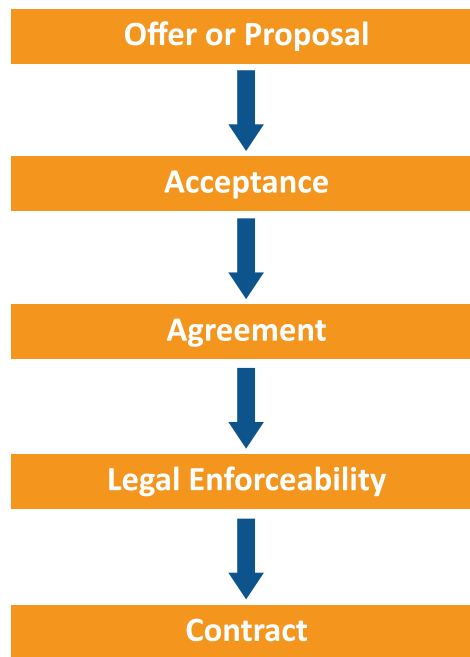
*Someone else defines the contract as under:*

*'The term contract is defined as an agreement between two or more parties which has a binding nature, in essence, the agreement with legal enforceability is said to be a contract. It creates and defines the duties and obligations of the parties involved.'*

### 3.2 Process of Contract:

First and foremost, an offer is made by one party to another, which when accepted by the

party to whom it is made, leads to the agreement. If that agreement is enforceable in the court of law, it is known as a contract.



### 3.3 Essential Elements of a Contract:



- a) **Agreement:** The primary element that creates a contract between parties is an agreement, which is a result of offer and acceptance that forms consideration for the parties concerned.
- b) **Free Consent:** Consent of the parties is another important aspect of a contract, which means the parties entering into the contract, must agree upon the same thing in the same sense. The consent of the parties is said to be free when it is not influenced by coercion, undue influence, fraud, misrepresentation and mistake.
- c) **Competency:** Competency refers to the capacity of the parties to enter into the contract, i.e. he/she has reached the age of maturity, he/she must be of sound mind, and he/she is not disqualified from contracting, as per the law like the alien enemy etc.
- d) **Consideration:** It implies the price agreed to be paid for the promisor's obligation by the promisee. It must be adequate and lawful.
- e) **Lawful object:** The object for which the contract is created must be lawful, or else it is declared as void.
- f) **Not expressly declared as void:** The law should not expressly declare the contract as void, such as contract in restraint of trade or legal proceedings.
- g) **Other important elements of a Contract:**
  - There must be **at least two parties** to constitute a contract, i.e. one who proposes and another accepts the same.
  - The parties entering into the contract must intend to **create a legal obligation** for one another.
  - It must be **in writing**.
  - There must be **certainty of meaning**. The terms of the parties must be clear to the parties, i.e. the party should not interpret anything differently, there must be a consensus ad idem.
  - There should be a possibility of performing the contract.

So, these are some paramount elements of a contract, without which it cannot be enforced in the court of law.

#### Contracts could be:

- **Valid Contract:** An agreement which is enforceable by law, is a valid contract.
- **Void Contract:** The contract which is no longer enforceable in the court of law is a void one.
- **Voidable Contract:** A contract in which one of the parties to the contract has a choice to avoid performing his/her part, then it is termed as a voidable contract. When the consent of the party is not free, the contract becomes voidable, at the option of the aggrieved party.
- **Illegal Contract:** A contract which is forbidden by law is termed as an illegal contract.

#### Let us consider an Example:

*State Cancer Institute, Guwahati, Assam entered in to contract with Medical Equipment Pvt Limited (Supplier) for supply of a sophisticated diagnostic equipment. The Supplier was*

*selected through a National Competitive Bidding method. The contract price was in INR. The supplier was supposed to import the item from Germany as the product was not available in the domestic market. However, due to increase in forex rate the import cost of the equipment increased by 20% resulting in a net loss for the Supplier to supply the equipment at the contracted rate. The supplier approached to the Authority demanding reimbursement of the loss sustained by him due to forex rate variation.*

**Question: Whether the Authority contractually liable to reimburse the loss sustained by the Supplier due to forex rate variation.**

### 3.4 Composition of Contract

A contract document comprises several components in a document dealing with different topics and bound together in a logical sequence. The components of contract documents for Goods, Works and Non-consulting services shall normally contain the following:

- General conditions of contract,
- Special Conditions of contract,
- Relevant completed price schedules.
- Relevant schedules of requirements or works requirements (for Works),
- Relevant technical specifications and drawing,
- Agreements, if any,
- Distribution list, if any (for goods),
- Other amendments to the contract conditions, if any, Agreed construction methodology (for works), and
- Procuring Entity's notification of award.
- Form of Advance Payments Guarantee (wherever applicable)

Similarly, the components of the contract documents for consulting services shall normally contain the following components:

- General Conditions of Contract;
- Special Conditions of Contract;
- Terms of Reference
- Key Experts
- Breakdown of Contract Prices
- Procuring Entity's notification of award
- Form of Advance Payments Guarantee (wherever applicable)

### 3.5 Formulation of Contract:

The Contracting authority must ensure that the 'right form of contract is in place, nature, value and complexity of the requirement and also the relationship required with potential contractor. A contract should be prepared on the basis of equality and mutual benefit. There is another condition for a contract to be successful. It should be in line with the applicable law. While preparing a contract for procurement of supplies, works or services, the main areas you need to focus on are:

- a) **Specifications or Terms of Reference:** Proper specification of supplies, works or services have to be provided.
- b) **General clauses:** Clauses, such as law governing the contract; language of the contract; order of precedence and communication route have to be included in the contract.
- c) **Main responsibilities:** the main responsibilities of parties must be established in the contract.

For example: The employer provides the site and the right to access while the contractor provides the works in accordance with the requirements.

- d) **Communication clauses:** It refers to means by which the parties are to communicate on important matters. It will state whether electronic communications are permitted or whether all important communications must be by physical delivery of a letter to a stated address, possibly against an acknowledgement.
- e) **Timings of work:** The timing of works such as commencement, program, delivery/ completion, delay and so on should be mentioned. Compliance with specifications: It refers to quality assurance, inspection, testing, installation, training, commissioning, and rectification of defects, guarantees and warranties, acceptance and so on.
- f) **Delivery Period for the Goods:** The contract shall clearly lay down the schedule of delivery and any associated conditions like pre-despatch inspection etc.
- g) **Timing for commencement and completion of Services:** The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days to be clearly indicated after the Effectiveness Date specified in the Special Conditions of Contract.
- h) **Payment:** It refers to the manner in which supplies, works or services are to be assessed and certified, time of payments, method of payment and delayed payments.
- i) **Variations and claims:** It explains the manner in which variations to the contract are to be evaluated and paid for and how the costs that result from Procuring Entity's liabilities are assessed and paid for.
- j) **Title:** It tells about ownership to objects, materials at the site and so on.
- k) **Risks:** when the risk of loss or damage is passing from the seller to the purchaser, is specified in Incoterms. Otherwise, there must be an express provision.
- l) **Insurance:** It tells about the risks of employers and contractors and what insurances each party will take. For example, damage or injury to supplies or works during transport or during erection or to employees during execution of the contract or performance of the services. Insurance also deal with questions such as what are the risks of employers and contractors and what insurances each party will take.
- m) **Failure to perform:** Reasons for and consequences of failure to perform must be included in the contract. The reasons could be delay damages, performance damages, termination of contract and security.
- n) **Force Majeure:** It refers to situations when a party fails to perform its obligations due to reasons beyond its control. This also should be part of the contract.
- o) **Other areas** are related to:

- Remedies for breach of contract, Social and environmental issues, and
- Resolution of disputes.

### 3.6 Use of International Commercial Terms or Incoterms:

The Incoterms (International Commercial Terms) are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC). These terms are widely used in international/national commercial transactions. Incoterms comprise a series of three-letter trade terms that are intended primarily to define the tasks, costs and risks associated with the transportation and delivery of goods, between the seller and the buyer. First published in 1936, Incoterms have been periodically updated, with the ninth version of Incoterms 2020 having been published in September, 2019.

A contract includes the conditions for shipping the goods based on the trade terms in Incoterms. The bidding documents specify that the terms EXW, CIP, FCA, CFR and other similar terms, and other similar terms, when used, and the rights and obligations of parties there under shall be governed by the rules prescribed by Incoterms specified in the SCC and published by the international Chamber of Commerce in Paris. The current version to be specified in the bidding documents is Incoterms 2020. Incoterms 2020 defines 11 terms and the relevant term may be used in the contract.

- A contract is interpreted in accordance with the laws of the purchaser's country.
- Until a formal contract is signed, the bidders offer and the notification of award will constitute a binding contract. Each contract is unique. To feel that you are in control, be sure that you have understood your contract.

### 3.7 Vitiating of Contract:

Vitiating elements of contracts are issues that make a contract void, and the existence of such elements invalidate and negate the full terms of the legal document.

There are five vitiating factors that undermine a contract and these are misrepresentation, mistake, duress, undue influence, and illegality.

- a) **Misrepresentation** occurs when one party makes a false statement that induces another party to enter into a contract. Fraudulent misrepresentations are made when one party knows that a particular statement is false.
- b) **Mistakes** either nullify the contractual agreement or negate the contract. Nullifying mistakes are mistakes with regard to quality of product or service that makes the contract impossible to perform. Mistakes that negate a contract are made unknowingly by both parties.
- c) **Duress** refers to one or both parties that are forced to enter a contract against the will of the party/parties. Threats of illegal behaviour or economic loss are two examples of duress in contract negotiations.
- d) **Undue influence** refers to one or more parties that may be influenced to enter a contract due to some other factor or party. Undue influence is similar to duress in that outside circumstances prevent the fulfilment of a contract. Undue influence will be presumed irrefutable where certain relationships exist. Examples include solicitor/client, doctor/patient, and parent/child. A rebuttable presumption will apply in other relationships if it can be shown that one party dominated the other. Where a loan is secured by

a person who is not in a commercial arrangement with the debtor, the lender is put on notice that undue influence may be presumed. The contract of security in such a situation may be set aside if there has been any undue influence or misrepresentation by the debtor, unless the lender has made sure that the person providing the security has received independent legal advice before entering in to the contract.

- e) **Illegality** refers to part of a contract that is written specifically to engage in illegal behaviour. Thus contracts such as those tending to corruption in public life, promoting sexual immorality, prejudicial to the administration of justice, trading with an enemy in war time, and contracts attempting to oust the jurisdiction of the courts will all be illegal and unenforceable. Judicial systems determine the illegality of contracts.

## 4. Assam Public Procurement Act, 2017 & Rules, 2020:

### 4.1. An Overview

Till now the State of Assam had multiple documents like Assam Financial Rules, The Delegation of Financial Powers Rules, 1999, Notifications by different departments, Non-Standard Bidding Documents and these have been guiding the procurement resulting in sub-optimal level of performance in procurement.

Recognizing the need to improve efficiency and establish a legal framework for procurement; Assam Government has promulgated 'The Assam Public Procurement Act, 2017'.

Subsequently, 'The Assam Public Procurement Rules, 2020' have been notified. The brief about the efforts put in formulation of Procurement Rules are mentioned as under:

- Multi-departmental task force drafted the Rules
- 3 years of effort; 16 meetings at the level of PS and above
- Consultation with 25 depts.; Judicial and Legislative vetting
- Procurement Rules notified in the gazette on 02/09/2020

These Rules lay down the procedure for procurement by procuring entities to ensure proper implementation of the Procurement Act, effective and timely achievement of the intended outcomes of the procurement process for meeting the public need. The Rules have been framed in a manner to ensure transparency, fairness, equitable treatment of bidders, economy & efficiency, professionalism by the officials involved in the process and compliance to the code of integrity in the procurement process as per the Act by officials of the procuring entities and also by the personnel of the participating bidders.

Both, the Act and the Rules have been made effective from 1st September 2021. The Assam Public Procurement Act - the main features:

- It is a single law governing public procurement in Assam.
- It has created institutional mechanism for carrying out public procurement by various procuring entities within the State of Assam.
- It provides clarity for action and flexibility for decision.
- The Act has provided for different methods (including new methods introduced for the first time) of procurement to cater to varying needs and situations.
- The Act has mandated creation of State Public Procurement Portal which shall be a single source of information for all procurement activities.



- The Act has clearly defined Code of Integrity, Conflict of Interest, Confidentiality.
- It allows aggrieved bidders to make Appeals.
- It also has provision for protection of officials for actions taken in good faith.

The Assam Public Procurement Rules:

- These have been framed for proper implementation of the provisions of the Procurement Act
- The Rules provide details of the information to be mandatorily put on the State Public Procurement Portal
- The Rules provides clear description of procurement processes and documentation
- These Rules include provision for use of standard bidding documents (SBDs) and defined the contents of bidding documents
- The Rules have special provisions for procurement under emergency and unforeseen situations
- The Rules have detailed procedure for processing procurement under different methods as per provisions of the Act to cater to every need
- The Rules provide new methods of procurement like Swiss Challenge, e-Reverse Auction etc.
- The Rules formalise procedure for execution of work through Construction Committee
- The Rules have detailed procedure for evaluation of Technical and Financial evaluation of Bids and finalisation of procurement

You will know more about the Act and the Rules in subsequent Modules.

## **4.2. Applicability of the Act**

4.2.1 The Act shall apply to all procuring entities as defined below:

- a) any department of the State Government or its attached or subordinate office;
- b) any State Public Sector Enterprise owned or controlled by the State Government;
- c) any entity established or constituted by the Constitution of India, whose expenditure is met from the Consolidated Fund of the State;
- d) any entity or Board or Corporation or authority or Society or Trust or autonomous entity (by whatever name called) established or constituted by an Act of the State Legislature or an entity owned or controlled by the State Government;
- e) any other entity which the State Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the State Government in so far as the utilization of such assistance towards procurement is concerned; and
- f) any procurement support agency or procurement agent or procurement consultant involved in procurement on behalf of the procuring entities specified in clauses (a) to (e) above.

4.2.2 The procurement procedure as prescribed under Chapter-II and provisions as mentioned under Chapter-III shall not apply to Procuring Entities in following Situations:

- a) Where the estimated Value or cost of the procurement is less than the threshold value as Finance Department may, by notification, specify for different class and categories of procurement or procuring entities;
- b) Emergency procurement necessary for management of any disaster, as defined in clause (a) of Section 2 of the Disaster Management Act, 2005;
- c) Procurement under Assembly and Parliamentary election urgency;
- d) Procurement for the purpose of security or on strategic consideration that the State Government may, by general or special order specify;
- e) Procurement by an Procuring entity under clause (b) to clause (e) of Sub section (2) of Section 3 from its subsidiary company or joint venture company in which such procuring entity has more than 50% share.
- f) Any other procurement as may be notified by the Finance Department from time to time.

## 5. Procurement Life cycle:

5.1 Almost all procurement done by an Procuring entity happens in stages that make up the procurement lifecycle. Each stage in the procurement lifecycle has forward and backward dependencies. Identifying these stages is an important step as it provides a formalized way to analyse the procurement process, discover any weaknesses in it and help formulate ways in which those weaknesses can be addressed in the future. The segmentation of the procurement lifecycle also enables a more precisely targeted approach to managing the entire process which saves time and resources if any issues should arise which jeopardize the effectiveness of the entire process.

### 5.2. Main stages in public procurement life cycle are:

- a) Need assessment
- b) Development of specifications
- c) Development of procurement plan
- d) Analysing the market and developing a strategy
- e) Bidding process – developing Bidding document, publication of NIB, opening of Bids
- f) Evaluation of bids and award of contract
- g) Contract execution
- h) Documentary records

### 5.3. Need assessment

5.3.1 The Public Procurement is essential for public services. It shall be the obligation and primary responsibility of the concerned procuring entity to ensure that no procurement that is not clearly essential to public services is made by it.

5.3.2 The first stage of the procurement lifecycle is identifying and then defining the need. Section-5 of the Act and Rule-3 of the Procurement Rules deliberate upon determination of the need. Through the involvement of various stakeholders from within the organization, it is possible

to develop the requirement in regard to quality, performance and qualitative characteristics, the specific quantum and the extent or scope of the subject matter of procurement. The need so determined shall be clearly spelt out by the procuring entity to avoid unwarranted expenditure or idle inventories. The procuring entity shall ensure that it does not include superfluous and non-essential quantum or features of the subject matter of procurement or exceed scale, consumption or usage limits of requirements as laid down in its extent or scope and shall ensure that:-

- (a) the purpose or solution sought to be obtained by the proposed procurement is sustainable;
- (b) the maintenance costs, where applicable, are reasonable and justified;
- (c) the proposed subject matter of procurement is compatible and interoperable with existing infrastructure or system.

### **5.3.3 Development of specifications or preparation of Terms of Reference and the Estimated Cost**

The technical specifications, detailed project report, terms of reference shall be so developed as to ensure value for money, a level playing field and wider competition in procurement, where applicable. It is also essential that the estimated cost of the subject matter of procurement is worked out in a systematic and logical manner. All relevant information used in working out the estimated cost such as last procurement rates, variation in the relevant indices during the period, the current market rates of the various elements of the cost based on market research etc. need to be put on record.

### **5.3.4 Development of Procurement Plan**

Advance procurement planning is necessary so that appropriate procurement strategies can be developed to achieve the larger goals of procurement. Sub-section-4 of Section-5 of the Act and Rule 4 of the Procurement Rules deliberate upon Procurement planning. Procurement plans facilitate a structured and considered approach to the management of procurement activities. Procurement plans should have interface with budgetary allocations. During the procurement planning stage you decide on clubbing or splitting of requirements of various field units, this has a very big influence on competition during bidding. It is necessary to involve the stakeholders to arrive at appropriate procurement plan. The procurement plan should include the type of Procurement - Goods, Works or Services, the purpose and objective of the procurement, its essentiality for public purposes, functional specification, estimated value, source of funds, procurement method, limitations if any, time frames, requirement of funds in subsequent financial years, and disclosure in the State Public Procurement Portal and the Departmental website.

### **5.3.5 Analysing the Market and Developing a Strategy**

Once a detailed requirement including technical specifications have been developed, the procurement department can proceed to market analysis in order to best develop a strategy that will provide the most value. Market analysis should also factor in the State's existing policies including the preferential procurement practices (Refer to the Procurement Preference Policy, Assam, 2015 or such other price or purchase preference that may be notified by the State Government from time to time) etc. This early market analysis will also provide insights into the degree of competition between potential suppliers and need to find ways and means to increase competition. Please refer to Rule 8(3), 23(F) (ii), 23(G)(ii) of the Assam Public Procurement Rules, 2020.

### 5.3.6 Bidding process

Bid document is an important component of the bidding process. Section-20 of the Act and Rule-21 of the Procurement Rules deliberate upon the content of the bidding document and also use of Standard Bidding Document. The bidding document is prepared to provide clear technical and commercial terms of reference for the proposed procurement, based on the standard bid documents finalised by the State. Bid documents for a particular procurement are prepared based on SBDs with required modifications to suit the special needs of that procurement.

The procedure of publication, submission, opening and evaluation of bids is covered under Rule-23 of the Procurement Rules. Publication is an important step as it maximises information available in the market which will increase competition and enhance Value for Money (VfM). Hence, cost incurred in publication should be seen as an investment. Sufficient publication is a necessary consideration for acceptance of single bids. Also, e-procurement is the normal method of tendering. However, even if an offline method of procurement is used, e-publishing should be ensured. Uploading of the bidding documents (even if e-procurement is not used) on the department website is also a good practice. Receipt and Opening of Bids, the procedures for receipt and opening of bids on e-procurement portal will be governed by the methods of e-procurement only. In physical bidding, the bids should preferably be dropped in a sealed bid box. However, if received by courier or post, the same has to be received by the officer authorised for that purpose. A Bid Opening Committee may be constituted for the purpose of opening the bids. Representatives of bidders should be enabled to watch the bid opening proceedings. However, for e-procurement portal, the bidders can login virtually to view the bid opening.

### 5.3.7 Evaluation of bids and award of contract

Rule-23 of the Procurement Rules covers the evaluation of the Bids. The evaluation is done in two steps. The first is the preliminary examination of bids, to assess the prima-facie responsiveness of the opened bids. This is done so that bids which are non-responsive are eliminated from the evaluation process altogether, which otherwise will take a lot of efforts.

- After the preliminary examination is over, the technical evaluation is tabulated with regard to the conditions of the bidding documents. The content of the tabulation template is given in Rule 23(11).
- For the tabulation of financial bids, the content of the comparative statement has also been provided Rule 23(12). It shall be inclusive of taxes. If bids were invited on a variable price basis,  
  
the bids shall be evaluated, compared and ranked on the basis of the position prevailing on the day of opening of bids, and not on the basis of any future date. In case of two bid system, such ranking shall be based on the position prevailing on the date of opening of the Technical bids.
- The Evaluation Committee shall mark the bids as L1, L2, L3 etc.
- Rules 23(20) (ii) defines provisions for lack of competition and how to deal with a single bid.

The evaluation stage gets completed once a supplier has been chosen. Upon deciding on the supplier, it is time to draw up a contract that will be satisfactory to both sides and that

will be as comprehensive as possible and publication of the contract award. The obligations of both parties should be clearly defined in the contract. The contract should also minimize contractual risks by including agreed-upon terms and conditions, as well as the procedure in case one of the parties has an issue with the other party's compliance with the contract. Both parties will then start implementing the contract, honouring the timelines and parameters that will ensure adherence to the terms and conditions outlined in the contract.

#### 5.3.8 Contract execution

It's important to monitor contract execution and its management as per the terms of contract finalised and included in the signed contract. The important risks during execution of contract could be as under:

- a) the risk of advance payments.
- b) There may be the risk of contract variations and re-negotiations after award of contract.
- c) Supervising agencies or individuals can be influenced to alter contents reports so that changes in quality go unnoticed.
- d) False or inaccurate claims by contractor can be allowed by those in charge of checking the claims.
- e) Subcontractors and partners may remain unaccountable and can be used to channel bribes.
- f) Section-11 of Procurement Act and Rule-12 of Procurement Rules specify Code of Integrity for procurement entity and bidders, and consequences of any breach of the Code.

#### 5.3.9 Documentary records

All procuring entities shall maintain and preserve in safe custody, all the records related to the specific procurement as per provisions of the Section-10 of Procurement Act and Rule- 11 of Procurement Rules. The duration of keeping such records shall be as laid down in the Assam Record Rules and the Assam Public Records Act, 2002.

It is essential for procuring entity to understand the procurement lifecycle as it will allow them improved insights into various stages and the overall performance of their process. It can also help in future modifications and improvements of the procurement process.

## 6. Role and Composition of Various Committees

### 6.1 Committees

6.1.1 All the Procuring Entities shall have at least the following two committees to carry out the procurement process involving bidding, other than the Committees as specifically required under different Procurement Methods;

- a) Procurement Committee
- b) Tender Evaluation Committee

6.1.2 However, in case of procurement goods or services which is highly technical or complex in nature demanding a special level of skill and expertise either to define technical parameters/specifications with respect to the product, packaging and handling, or to evaluate the technical proposal in a fair, transparent and scientific manner then there shall be a **Technical Committee** in addition to two above mentioned committees.

6.1.3 In addition to above Committees the procurement committee may appoint other committees or sub-committees as an required and define their role and responsibilities. Some of the sun committees are as given below:

- a) Committee for Bidding Document Preparation
- b) Committee for Bid Opening
- c) Committee for Contract Monitoring, etc.

6.1.4. In addition to above committees there are committees which are already defined under the Act for specific procurement method, which includes

- a) Spot Purchase Committee
- b) Committee for Competitive Negotiation

## 6.2 Role & Responsibilities of Procurement Committee (PC)

- a) Prepare Annual Procurement Plan in line with the budgetary allocation and ensure that the procurement is according to the procurement plan.
- b) Finalise the Bidding Document and endorse it for the approval of the appropriate authority, in each occasion, with relevant other terms and conditions and ensure that it is complete and incompliant with the prescribed procurement laws & practices.
- c) Endorse for the issue/release of the tender document and all subsequent corrigendum based on the recommendation of the Tender Evaluation Committee or other committee/ sub-committees, as the case may be.
- d) Evaluate the schedules for procurement and specifications and ensure that the procurement process conforms strictly to the provisions of Act , Rules and other operating regulations and guidelines.
- e) Appoint other committees and sub-committees, as required, for carrying out different procurement function successfully.
- f) Ensure that all reporting requirements are being met and all contracts are duly administered.
- g) Recommend the proper mode of procurement for each item(s) to be procured.

## 6.3. Composition of the Procurement Committee:

6.3.1 The Procurement Committee is normally headed by the tender inviting authority i.e., head of the procuring entity. An authority can invite the tender provided it is within its delegated financial limit/authority. In case the tender value is likely to exceed the authorized limit then prior approval of the higher authority with appropriate financial limit to be obtained by the tender inviting authority.

6.3.2. The head of finance of the respective procuring entity shall be the permeant member of the Procurement Committee.

6.3.3 The other members of the PC shall be primarily decided by the procuring authority depending upon their organisational structure. There can be both permanent and non-permanent members, where non-permanent members can be decided on case to case basis.



#### **6.4. Tender Evaluation Committee (TEC)-Role & Responsibilities**

6.4.1 The TEC shall have the mandate to evaluate all bids solicited. The key functions of the committee are as follows:

- a) The committee shall evaluate the tender Pre-qualifications and prepare a report explaining the specific reasons for its recommendations.
- b) Ensure that tenders are evaluated in terms of the provisions in the bid document to ensure compliance with the commercial and technical aspects. The criteria for evaluating the bid should be predetermined and publicly published.
- c) The committee shall prepare a detailed report on the evaluation and comparison of bids for submission to the Procurement Committee explaining clearly the specific reasons for recommendation for the award of contract.

#### **6.4.2 Inclusion of expert**

Specialized staff as needed for the evaluation of a particular bid shall be members of the Tender Evaluation Committee. In-house specialists as well as external consultants recruited for specific purposes can be members of this committee. The tender inviting authority may also nominate the external members having relevant skill and expertise to the committee.

#### **6.4.3 Composition**

The Tender Evaluation Committee shall consist of members from technical and financial background. Some of the members of the PC may be taken as the member of the TEC. If necessary the procurement authority may appoint an external member with relevant expertise. The size of the TEC should be restricted to a maximum of three to four members.

#### **6.4.4 Important Criteria with respect to composition of the Committee**

- a) No consultant or advisor, by whatever name called, shall be a member of any such Committee.
- b) Each such Committee shall consist of three or more members, provided that, in cases of e-procurement, the Bid Opening Committee may have a minimum of two members.
- c) The concerned Financial Advisor or the Finance and Accounts Officer or Senior most Officer of the procuring entity dealing with finance as the case may be a member in all the Committees.
- d) The procuring entity may nominate a Technical Official having the relevant expertise as a member in any or all the Committees if deemed necessary.
- e) The procuring entity may, with the prior approval of the concerned Administrative Department and after recording reasons thereof, engage a consultant having the requisite level of expertise as a subject matter specialist to assist any or all the Committees but such consultant shall not be part of the Committee or Committees.
- f) In complex projects, the work of preparation of project report or bidding documents may be assigned to duly engaged Consultants having the requisite level of expertise with the prior approval of the concerned Administrative Department.
- g) The Administrative Department may direct the procuring entities to include an officer from the office of the next higher authority in any of these committees, if so deemed necessary.



- h) Execution of works under MP-LADS / MLA-ADS / Schemes under Untied Funds through Construction Committees

## 7. Approval Processes:

Rule 8 of the Procurement Rules covers the approval requirements in the procurement process which are as under:

- a) It shall be obligatory for every procurement entity to obtain all the required approvals and sanctions as prescribed in the Assam Financial Rules, 1939, Delegation of Financial Power Rules, 1999 or other relevant Acts, Rules and orders as amended up to date before initiating any procurement. In case of procurement of works, this shall, inter alia, include due administrative approval and technical sanction. In case of goods and services, these shall, inter alia, include due approval of rates through due process.
- b) No authority or official shall initiate any procurement unless such authority or official has been delegated with the necessary financial powers for the particular subject matter of procurement and the value or cost thereof under the relevant Delegation of Financial Powers Rules, by whatever name called, and budget provision or funds for the purpose is clearly available for the purpose.
- c) In case of procurement of works, no work order or letter of acceptance of bid shall be issued before Administrative Approval for such procurement has been duly accorded in compliance with the existing rules, and orders that may be issued from time to time as laid down in the Assam Fiscal Responsibility and Budget Management Act 2005, (Act No XXVII of 2005).

*Explanation: Bids for works may be invited only after Administrative Approval (A/A) for the work based on plan and estimates duly prepared as per duly notified Schedule of Rates and market analysis as applicable as well as the Technical Sanction (TS) thereon has been duly accorded by the competent authorities.*

- d) In case of procurement of goods and services, no supply order or letter of acceptance of bid shall be issued before financial sanction for such procurement has been duly accorded in compliance with existing rules and orders that may be issued from time to time as laid down in the said Act of 2005. Bids may be accepted only after such financial sanction has been duly accorded.
- e) Advance Action for Procurement:
  - Any advance action for procurement for works by any procuring entity in terms of clause (b) of sub-section (1) of section 8 of the Act, shall be strictly limited to feasibility studies, design, soil testing, deciding quality control measures, framing of plan and estimates or detailed project report, preparation of specific bidding documents and other necessary preparatory work but bids shall be invited as prescribed only after obtaining approval of the next higher authority. Further, the bids shall be opened only after Administrative Approval has been duly accorded for such procurement by the competent authority;
  - Any such advance action for procurement of goods and services by any procuring entity in terms of clause (b), of sub-section (1), of section 8 of the Act shall be strictly limited to all preparatory work like identification of quality and other relevant specifications or terms and conditions, preparation of specific bidding documents and finalisation of rates by inviting appropriate bids thereof as per due process but no bid

shall be accepted or supply order issued before sanction has been duly accorded for such procurement by the competent authority.

- f) Subject to the provisions in Rule 8 of Procurement Rules, the Head of the concerned Administrative Department, with the views of the concerned Financial Advisor and the Head of the concerned Department, with the views of the concerned Finance and Accounts Officers shall be the designated Authority up to their respective financial powers specified in the relevant Delegation of Financial Power Rules, 1999 as amended from time to time for approving such advance action in terms of clause (b) of sub-section (1) of section 8 of the Act, in respect of procurement entities specified in clause (a) of sub-section (2) of section 3 of the Act. In respect of the procurement entities specified in clauses (b) to (f) of sub-section (2) of section 3 of the Act, the Head of the concerned Body with the concurrence of the Head of the Finance of that Body shall be such designated Authority:

Provided that the State Government may, by Notification, designate any other Authority or Authorities for approval of such advance actions or prescribe further conditions or guidelines for such advance action.

- g) In terms of the provision of sub-section (2) of section 8 of the Act, the Finance Department, having regard to the position of State finances and matters incidental thereto or for prudent fiscal management, may prescribe specific limits of outstanding liabilities for the different procuring Departments or the different procuring entities under them beyond which no new procurement shall be taken up or administratively approved or sanctioned by them.
- h) No procurement entity shall divide or bulk its procurement after bids have been invited for the purpose under any circumstances and violation thereof shall be deemed as wilful dereliction of duty constituting grave misconduct under the relevant conduct rules.

## TRANSITION TO THE NEW PROCUREMENT FRAMEWORK

### Learning Outcomes

After studying this module, you will be able to

- Describe the salient features of the Assam Financial Rules
- Describe the salient features of the Assam Fiscal Responsibility and Budget Management Act
- Describe the provisions relevant to Public Procurement in the Delegation of Power Rules
- Describe the salient features of the Assam Public Procurement Act, and Rules

### A. The Assam Financial Rules 1939

**Background:** The section 151 of the Government of India Act 1935, empowered the Governor of a Province (State) to make rules regarding receipt of all moneys on account of revenues of the Province into a public account, withdrawal of money from that account, custody of money in that account, and any other matter ancillary or connected with the aforesaid activities.

The Assam Financial Rules (AFR) have been promulgated in 1939, based on these powers granted to the Governor by the above Act. The rules cover a wide variety of subjects such as receipt of Government money (Rule 53-57), custody of Government Money (R-56-60), drawing Money from the Treasury (R-62-63), processing of cheques (R-64-73), maintaining the Cash Book (R-95) etc.

The AFR provides for revenue receipts, checks to be exercised by controlling officers, recoveries of rent from buildings and land, Rules regarding Pay and Allowances, payments of salary and allowances to Gazetted government servants, payment of pensions, payments of Loans and Advances, advances to government servants, deposits, and remittances to the Reserve Bank of India.

The AFR provides detailed rules on how the work of the Treasury is to be carried out, when the Treasury is maintained by the Government or by a Bank, including handling of Ways and Means Advances.

The AFR has rules for sale of quinine (R- 132), vaccine lymphs (R-133) and seed depot articles (R-134).

It also covers subjects like Defalcation and Losses (R-103), Security Deposits (R- 106), Lapsed and Confiscated Deposits (R-113-114), Accounts of Interest bearing securities (R-115), Arrears Claims (R-84- 90), Responsibility for over-charges (R- 93), and Destruction of records (R-116).

### WORKS

**Public Works Department (PWD):** For the PWD, the AFR contains rules on sanctioning a work, preparation of demand, disposal of land, commencing a work, advances to contractors, supplementary estimates, revised estimates and completion reports (R-240- 286).

For the accounts of the PWD, the AFR contains rules on maintaining muster rolls, measurement books, payments to labourers, payments to suppliers and contractors, cash payments, issue of materials to contractors and works, recording expenditure over major works and minor works, keeping a watch over liabilities and balances, recording progress of work, and closing accounts on completion / closure of works (R287-363).

The AFR has provisions for making a number of advances to government servants and others, like advance for construction of houses (R-382), carrying out repairs to houses (R-383), purchase of motor cars or motor boats (R-385), purchase of other conveyances (R-387), other advances, and forms for drawing advances and repaying advances (R-398- 400).

## STORES

In the area of materials management, the AFR has rules for Receipt of Stores (R-192), Issue of Stores (R-193), maintaining Stock Accounts (R-194), Stock taking (R-195), maintaining Quantity and Value accounts (R-211-212), making payments for tools and plant received (R- 224), making recoveries where applicable (R-225-226), and Stock Verification (R- 227).

The departments of Public Works, Forest, Agriculture and Jails possess large quantities of materials for consumption, manufacture, and so on. The departmental officers in charge of these stores have been made responsible for maintaining proper records and returns about the stores entrusted to them.

**Receipts:** Whenever material is received it should be examined, counted, measured or weighed as the case may be, and they should be kept in charge of a responsible government servant who will acknowledge receipt and record them in the appropriate stock register. (R-192).

**Issues:** Whenever material is issued from stock, the government official in charge of such stores must see that it is issued against a requisition made on proper form, by a properly authorised person. When material is issued, an acknowledgement must be taken from the person to whom materials are dispatched, or his properly authorised agent. (R-193)

**Accounting:** Stock accounts should be maintained in two forms (R-194): (a) Quantity accounts and (b) Value accounts. (R-206-210)

**Quantity Accounts:** In the Quantity accounts, all material received and issued must be entered on the date of the transaction and balances struck at the end of the month. The quantity balances must tally with the quantity in stock.

**Value Account:** The Value account should show the value of the materials received in and issued from stock. The value of all materials received should be shown on the Payment side, and the value of all material issued should be shown on the receipt side. The rates for each item will be fixed from time to time by the competent authority considering original price, carriage, depreciation, wastage, godown charges and other charges. This valuation may be done twice a year and prices may be adjusted, to bring the net value difference to zero over time.

**Stocktaking:** The balance in stock should be checked half-yearly to see if the balance on hand corresponds to the balance and value in the account books. Any discrepancy found during the verification should be explained fully, and the book balance set right after taking orders from the competent authority. Stock verification should be made by a higher official of the same or different department. For verification of stores of a technical nature, a senior official of a different department may be borrowed. (R-195)

**Disposal of Stores:** When stores are sold to the Public Works or other departments, including state railways, or are issued on account of any work executed for them in workshops at their full value, an addition of 10 percent must be made to cover charges for supervision, storage and contingencies. This additional charge may be waived off by the sanctioning officer in case of surplus stores which are otherwise unsaleable. (R-203-204)

**Survey of Unserviceable Stores:** All stores, tools and plants, which have become unserviceable must be reported on Form 18-A to the authority competent to issue orders for their disposal. The report must show the time the said material was in use or storage, and the reason why it has deteriorated. (R-204)

**Disposal by Auction:** Except as specially provided elsewhere no public stores should be sold otherwise than by public auction. Commission, which should not exceed 5 percent, may be allowed to the auctioneer. No commission should be paid for private sales. (R-204)

**Payments for stores received:** Suppliers' bills must be examined before payment as provided in the AFR. Care must be taken to avoid erroneous double payments. Store officers and sectional officers may be required to verify the suppliers' bills. The disbursing officer is responsible that no payment is made unless the prescribed precautions have been observed. (R-211)

#### **EXECUTION OF WORKS** (by PWD)

The AFR contains several rules made for the Public Works Department, which cover a wide range of operations of the department. The major operations are discussed below.

**Technical Sanction:** For every work a detailed estimate should be made for sanction by a competent authority of PWD. This sanction is known as "Technical Sanction" to the estimate. Technical sanction need not be taken for petty or small works and repairs where lump-sum sanction has already been taken. (R-240-243)

**Administrative Approval:** For any work undertaken for another department, a proposal (containing a preliminary report and an approximate estimate) must be sent to that department (by PWD) and their concurrence taken. The formal acceptance of the proposal by the other department is termed as "Administrative Approval". Before approving the proposal the department should examine its structural soundness and correctness of the preliminary estimate. Finance concurrence must also be taken. The administrative approval is in fact an order given by the other department to PWD for executing the said work at the stated cost to meet the administrative needs of that department. Administrative approval does not do away with Technical sanction; the latter is still required. (R-241)

For works required by the PWD itself, both Administrative approval and Technical sanction must be accorded by PWD. (R-240-243)

**Project Estimate:** The papers required to be submitted with a project are

- a report,
- a specification,
- a detailed statement of measurements,
- quantities and
- an abstract showing the estimated cost of each item.

These documents together form the "Estimate". To facilitate the preparation of estimates, a schedule of rates for each kind of work commonly executed should be kept up in each division. The estimated rates should generally agree with the schedule of rates but if for any reason these are not considered sufficient, or are in excess, a detailed statement must be annexed to the estimate showing the manner in which the rate used in the estimate is arrived at. It should be prepared on the basis of the rates prevailing in each locality and necessary analysis of the rates for each description of work and for the varying conditions thereof should, as far as practicable, be recorded. (R-248)

**Supplementary Estimate:** Any development of a project thought necessary while a work is in progress, which is not fairly contingent on the proper execution of the work as first sanctioned, must be covered by a supplementary estimate, accompanied by a full report of the circumstances which render it necessary. The abstract must show the amount of the original estimate and the total of the sanction required including the supplementary amount. (R-277)

**Revised Estimate:** A revised estimate must be submitted when the sanctioned estimate is likely to be exceeded by more than 5 per cent, for any cause whatever, or when material developments or deviations have necessitated revised administrative approval. It must be accompanied by a report showing the progress made to date and explaining fully the cause of the revision. The revised estimate need contain no details of items which are not altered but merely a note to this effect. The sanctioned estimate must accompany a revised estimate. It is the duty of the Executive Engineer to see that a revised estimate is prepared and disposed of directly if the necessity arises. (R-278-280)

**Piece-Work:** Piece-work is that for which a rate only is agreed upon without reference to the total quality or the quantity to be done within a given period. (R-249)

**Contract-Work:** Any other work, done under agreement, is termed “contract-work” and agreements for such work, which should invariably be in writing and should be precisely and definitely expressed should state the quality and quantity of the work to be done, the specifications to be complied with, the time within which the work is to be completed, the conditions to be observed, the security to be lodged; and the terms upon which the payments will be made and penalties exacted with any provisions necessary for safeguarding the property entrusted to the contractor. The term “contract” does not include agreements for the execution of work by piece-work nor does it include ordinary purchases of materials. (R-249)

**Tendering:** Sealed tenders should invariably be invited in the most and public manner possible, by advertisement in the Government Gazette or the Press, or by public notice in English and the vernacular; tenderers should have free access to the contract documents. The notice should state:

1. The place where, the time when, the contract documents can be seen, and blank forms of tender obtained,
2. The place where, and the time and date on which, tenders are to be submitted and are to be opened,
3. The amount of earnest money to accompany the tenders and the amount and nature of the security deposit required in the case of the accepted tender. The earnest money required should either be forwarded with the tender in currency notes or deposited in the treasury, the duplicate copy of the challan being attached to the tender; cheques on banks should not be accepted for this purpose. National Savings Certificates endorsed to the controlling officer are acceptable. (R-254)

**Types of Contracts:** Three types of contracts have been envisaged by the AFC:

**Lump-Sum:** In a lump sum contract, the contractor engages to execute the work with all its contingencies for a fixed sum.

**Schedule:** Schedule contracts are those in which the contractor undertakes to execute the work at fixed rates, the sum he is to receive depending on the quantities and kind of work done or materials supplied.



The third kind of contract is a combination of both these. Thus a fixed sum is proposed for the completion of the work as specified and a Schedule of rates is agreed upon by which to regulate the price to be paid or to be deducted for additions and alterations. (R-250)

**Responsibility for Execution:** Engineers and their subordinates are responsible that the terms of contracts are strictly enforced, and that no act is done tending to nullify or vitiate a contract. All contract deeds must be executed on one or other of the standard forms, but they may be modified to suit local requirements after consultation with the legal advisers of Government. The terms of a contract once entered into should not be materially varied without the previous consent of the officer competent to enter into the contract so varied. All agreements or security bonds entered into with the public works department by contractors for the execution of work or for securing the due performance of contracts are exempt from stamp duty. (R-251)

**Contract Documents:** Before a work is given out on contract, the Executive Engineer must prepare the necessary “contract documents” such as –

- (i) a set of drawing showing the general dimensions of the proposed work, and, so far as necessary, details of the various parts,
- (ii) A specification of the work to be done, and of the materials to be used;
- (iii) A schedule of quantities; and
- (iv) A set of “conditions of contract” to be complied with by the person whose tender is accepted. (R-252)

In works of great magnitude, contract deeds should be specially prepared by the Government law officers. In case of emergency, works can be carried out in R- 2 Form without calling for tenders. (R-253- 254)

**Earnest Money:** The amount of earnest money to be deposited should be sufficiently large to be security against loss, in case of the contractor failing to furnish the required security within the appointed time after the acceptance of his tender, or until the sum due to him forms a sufficient guarantee as the case may be. In the event, however, of materials being supplied by the contractor, no earnest money or security deposit is required when completed items of work are done on piece work arrangement. (R-255)

**Tender Acceptance:** Usually the lowest tender should be accepted, unless there be some objection to the capability of the contractor, the security offered by him or his execution of former work. In selecting the tender to be accepted. The financial status of the individuals and firms tendering should be taken into consideration in addition to all other relevant factors. At the same time the acceptance or rejection of tenders is left entirely to the discretion of the officer to whom the duty is, entrusted and no explanation can be demanded of the cause of the rejection of his offer by any person making (submitting) a tender. Such an explanation may be called for by superior authority if considered necessary. In cases where the lowest tender is not accepted, reasons should be recorded confidentially.

Authority should always be reserved to reject any or all of the tenders received, without the assignment of a reason, and this should be expressly stated in the advertisements. All tenders received for the same contract should be opened by the Executive Engineer or other officer in person, in the presence of such of the tenderers or their agents as may choose to attend. No tender should be accepted from any person directly or indirectly connected with Government service, or which involves an uncertain or indefinite liability or any condition of an unusual character. (R-256-258)



No authority lower than the officer-in-charge of a sub-division can accept any tender or make a contract for public work. The officer legally empowered to execute on behalf of the Governor of Assam the different classes of deeds, contracts and other instruments are detailed in Appendix IV to the book of Financial Powers. (R- 262)

**Performance Security:** Security should in all cases be taken for the due fulfillment of a contract. This security may be:

- (a) A deposit of cash, Government securities, Municipal debentures, Port Trust bonds and (deposits of all Scheduled Banks) approved by Governments,
- (b) Post Office 5-year cash certificates for the amount at which the certificates were purchased but not for their face value,
- (c) A deduction of 20 per cent from the monthly payment to be made on account of work done,
- (d) Personal security of two persons of known probity and substance,
- (e) A guarantee bond from a recognised bank approved by Government.

**Note:** The securities can be in terms of deposit receipts of all non-scheduled Banks instead of recognized approved Banks. (R-259)

**Commencement of Work:** No work shall be commenced unless a detailed design and estimate have been sanctioned, allotment of funds made and orders for its commencement issued by competent authority. Not only do these three conditions apply, even though the work is included in the budget for the year, but sanction to the estimate does not of itself convey authority to commence a work, unless the other two conditions are fulfilled also. (R-268)

When any building is about to be commenced, or any alteration, addition or repair executed to any building, due intimation of such intention must be given to the local head of the department, military or civil concerned. (R-269A)

**Completion Report:** A detailed completion report in the form prescribed in R. 359 need only be prepared in respect of works on which the outlay has been recorded by sub-heads

1. When, if the work was sanctioned by higher authority, the total estimate has been exceeded by more than 5 per cent; and
2. When, if the work was sanctioned, by the Executive Engineer, the total estimate has been exceeded by an amount greater than that which he is empowered to pass.

This report should give a comparison and explanation of differences between the quantity, rate and cost of the work executed and those entered in the estimate.

Note. The account of a work should be closed within three months from the date on which actual work has been completed. (R-281-282)

## B. The Assam Fiscal Responsibility and Budget Management Act 2005

This act was promulgated by the Assam Legislative Assembly to provide for the State Government's responsibility to ensure fiscal stability, sustainability, improve efficiency and transparency in the management of the public finances in the state, enhance the availability of resources by achieving revenue surplus, reduce fiscal deficit, streamline conduct of fiscal policy and improve the social, physical infrastructure and human development in the State. This Act is applicable to the whole of Assam.

**Definitions:** The Act provides definitions of a number of terms. The important definitions are discussed below:

*“Administrative Approval”* is an authority to create a liability or to incur expenditure.

*“Appointing Authorities”* means officers of the state who exercise the authority of appointing persons to the posts under the State Government.

*“Fiscal Deficit”* means the excess of fiscal disbursements over revenue receipts, recovery of loans, and non-debt capital receipts. Debt repayments are not counted in the disbursements in this case.

*“Revenue Deficit”* means the excess of revenue expenditure over revenue receipts in a financial year.

*“Revenue Surplus”* means the excess of revenue receipts over revenue expenditure.

*“Sanctioned Post”* means posts which were created by the sanction of the State Government and have not been abolished or kept in abeyance by an order of the State Government.

*Five Year Fiscal Plan:* The State Government in each financial year present a Five Year Fiscal Plan to the State Legislature. This plan will set forth a five year rolling target for the prescribed fiscal indicators showing the underlying assumptions.

It will also contain an evaluation of the fiscal indicators in the previous year compared to the targets set out earlier and the likely performance in the current year as per revised estimates. A statement on the recent economic trends and future prospects for growth and development affecting the fiscal position of the State Government will also be included.

*Fiscal Management Principles:*

1. The following are the guiding principles
  - a. Manage expenditures consistent with revenue generated,
  - b. Maintain government debt at prudent level,
  - c. Manage guarantees and other contingent liabilities prudently,
  - d. Policy decisions should have due regard to financial implications on future generations,
  - e. Borrowings should be used for productive assets and capital assets, and not for revenue expenditure
  - f. Tax burden should be stable and predictable
  - g. Special incentives, concessions and exemptions should be minimised in the tax system
  - h. Tax policies consistent with efficiency and compliance costs; which means that tax collected should exceed the cost of collecting it,
  - i. Expenditure should provide a push to higher economic growth, poverty reduction and human welfare,
  - j. Revenue surplus should be built up, to be used for generating capital and productive expenditure
  - k. Physical assets of the government must be maintained,
  - l. Transparency should be maintained so that public can scrutinise finances,
  - m. Fiscal risk on PSUs providing public services must be minimised

- n. Current liabilities must be discharged in a timely manner
- o. Budget should be formulated realistically

**Measures to ensure Fiscal Discipline:**

1. To ensure timely discharge of current liabilities and payment of salaries
  - a. Appointments will be made only against vacant sanctioned posts,
  - b. No new posts will be created without the concurrence of the Finance department,
  - c. Vacancies arising out of transfer and leave shall not be filled by appointment,
  - d. More than one appointment will not be made against one vacant post,
  - e. Appointments shall not be made against anticipated vacancies,
  - f. The letter of appointment will indicate identity of the post (post code) to which appointment is being made,
  - g. The list of persons selected for appointment will not contain names more than the advertised vacancies,
2. Before award of contract for purchase of goods or services, or starting a construction work, or awarding any work, administrative approval or financial sanction will be taken.
3. Each department shall maintain a register of works and orders for supply of goods and services; the total liabilities, liabilities cleared and liabilities pending against these.

**Offences and Penalties:**

1. Anyone violating one or more of the measures prescribed to ensure fiscal discipline shall be punishable with rigorous imprisonment extending upto three years.
2. Whoever causes financial loss to the State Government wilfully and with malafide intention by under assessment and/or under realisation of revenue and/or by incurring unauthorised expenditure shall be punishable with rigorous imprisonment extending upto three years and/or recovery of the financial loss with interest.
3. A person abetting the above offences shall be liable for the same punishment as the person committing the offence.
4. Offences will be triable by a Judicial Magistrate 1<sup>st</sup> Class or higher.

**C. The Assam Delegation of Financial Powers Rules, 1999, (Second Edition, 2016) with up-to date amendments**

As per the Indian Constitution, all powers in a State vest with the Governor of the State. This means that for any action to be taken by any authority anywhere in the state, approval of the Governor must be taken.

In order to facilitate day-to-day functioning of the state government, the powers of the Governor are delegated to the various branches and authorities of the state government as required. Also, as circumstances change, inflation increases costs, the quantum of operations increases, the extent of delegation of these powers is changed to maintain efficiency and effective operations. This change happens over time.

The financial powers delegated to the Administrative departments, Heads of the Departments, Subordinate authorities in relation to the various items of expenditure from the exchequer were given in the Delegation of Finance Powers Rules, 1960. The third edition was published in 1993.

With a view to enable greater efficiency, speedier implementation, and rationalisation, the Delegation of Financial Power Rules 1999 was published. However, due to the increasing size of the government, rising inflation, need for efficient and effective financial operations, the **second edition** of the rules, with all the up-to-date amendments was published in 2016.

It is a primary condition for exercise of financial power that public revenues may be object of public expenditure. Even if sanction has been accorded, no expenditure can be incurred unless funds to cover the charge are available during the financial year. When applying for sanction, the source of funds must be indicated. The sanctioning authority must also indicate in the body of the sanction how the funds will be made available.

**Effect of sanction:**

1. Sanction to any given expenditure becomes operative only when funds have been appropriated to it, but not before,
2. Sanction to a multi-year recurring expenditure remains operative till the years' funds are allotted to it, subject to the terms of sanction,
3. Disbursing officers should be careful not to act on a sanction if budget has not been allotted to it.
4. Regular and authorised expenditure, such as pay, travelling allowance, diet charges of witness etc, which cannot be avoided, may be incurred in anticipation of budget provision.

*Re-appropriation:* Subject to restrictions given in the rules, only the Finance department is competent to sanction re-appropriation of funds within a grant from major, minor or subordinate head to another subordinate head of the same grant. Copy of the re-appropriation must be sent to the Accountant General as soon as such re-appropriation is done.

*Schedules:* The delegation of Financial powers has been divided into three schedules.

*Schedule-I:* Powers delegated to the Departments of the Government

*Schedule-II:* Powers delegated to the Heads of Departments

*Schedule-III:* Specific Powers delegated to certain departments of the government, Heads of departments, and authority subordinate to them.

*Annexures:* The DFPR contains six annexures which provide specific instructions.

- Annexure-I : Instructions for Guidance of Financial Advisors
- Annexure-II : Duties and functions of the Finance and Accounts officers
- Annexure-III : Authority to execute instruments
- Annexure-IV : Delegation of power for sanctioning permanent retention of a temporary post
- Annexure-V : Instructions to intimate cases of Financial irregularities to the Finance department
- Annexure-VI : Validity period of administrative approval

**Powers delegated to the Departments of the Government (Schedule-I):** The powers delegated to Departments of the State Government are on items like:

- Renewal of sanction of staff
- According administrative approval to plan and estimates for civil works to be carried out by

PWD or PSUs

- Sanction miscellaneous expenditure on any individual case or any object for which no scale has been prescribed
- Sanction expenditure on contingencies
- Sanction write-off of unserviceable stores & vehicles, irrecoverable value of stores
- Sanction refunds of revenue not provided for elsewhere
- Sanction remission of disallowances by Audit Officers
- Sanction deputation of government servants (temporary and permanent) for training
- Accept Tenders
- Sanction loans of specified types
- Sanction medical reimbursement
- Sanction political grant and grants to political pensioners
- Fixing remuneration of lawyers
- Sanction local printing of standardised forms
- Grant of honorarium upto superintendent

**Powers delegated to Heads of Departments (Schedule-II):** The powers delegated to Head of Departments are on items like:

- According administrative approval to plan and estimates of Civil works to be carried out by PWD
- According administrative approval to plan and estimates of works to be carried out departmentally
- Sanction expenditure for maintenance of departmental buildings
- Sanction expenditure on contingencies
- Incur expenditure on exhibitions, shows and fairs
- Write-off irrecoverable value of stores, building, livestock and furniture
- Award scholarships, stipends, and other contingency expenditures
- Accept Tenders
- Execute contracts and instruments
- Sanction advance to Government servant for construction and repairs of house
- Sanction Transfer advance
- Sanction pre-audit claims upto 6 years
- Sanction ex-gratia grants to non- gazetted employees getting killed by extremists
- Sanction rehabilitation grants to families whose houses have been burnt/damaged in recent ethnic violence
- Sanction payment of charges for NSDL

### **Powers delegated to certain departments, Heads of Departments and subordinate authorities (Schedule-III):**

In this schedule the powers granted to specific departments, specific Head of departments, and specific subordinate officials are listed.

*Please refer to the Delegation of Financial Powers Rules for further details (448 listed powers)*

*Role of Financial Advisors and Sr Financial Advisors (Annexure-I):* Financial Advisors have been appointed under the scheme of decentralisation of Finance. As officers representing the department of Finance, they are expected to see that large public expenditure brings about commensurate results for the public. In short, economy should be the guiding principle.

However, there is a risk of economy being insisted at the expense of results. For instance, spending a little more on a project, may result in achieving an output which is proportionately bigger, and thus more than justifies the extra expenditure. In such cases, cutting down expenditure to a bare minimum may not be desirable.

Therefore, a Financial Advisor must exercise his judgement prudently and ensure that maximum return is obtained for the money spent, and the expenditure proposed is sufficient to meet the objects of the scheme.

The Financial Advisor must advise administrative departments, and also keep close touch with the Finance department.

## **D. Procurement Preference Policy:**

### **Objectives:**

The new preference policy in the name of "Assam Procurement Preference Policy, 2021 has been made applicable w.e.f. 29th January 2022 with following objectives:

- (i) to facilitate growth of Small and Micro Enterprises, to provide opportunity to local entrepreneurial talents and to maximize avenues for employment generation,
- (ii) increased participation by Small and Micro Enterprises in the State Government Stores Purchase Programme,
- (iii) enhancement of competitiveness amongst the Small and Micro Enterprises,
- (iv) encourage linkages between Small and Micro Enterprises and Large Enterprises,
- (v) increased share of supplies of Small and Micro Enterprises to State Government Departments and its aided institutions and Public Sector Enterprises,
- (vi) development of Micro And Small Enterprises vendor in rural areas and enhancing participation of Small and Micro Enterprises.

### **Eligible Units for Preference**

- a) The Micro And Small Enterprises shall have its own **production facilities /base in the State.**
- b) The Head Office or Corporate Office of such registered unit/company/ enterprises shall be **within the territorial jurisdiction of Assam.**
- c) Any Micro And Small Enterprise who has obtained an Udyam Registration shall be eligible under the Policy.
- d) Such units shall be called enterprises registered under Procurement Preference Policy and



when such units supply/ intend to supply goods or render services to State Government offices Corporations/ PSUs etc. they shall be called suppliers.

- e) The Micro and Small Enterprise/other enterprise and unit must have engaged **90% local people** in employment.
- f) Any Micro and Small Enterprise registered in Assam shall have to maintain 'local content' of a particular item of goods or services or works as specified in a consolidated notification to be issued by Chief Secretary for different items from time to time. The tender for services and works shall not be divisible amongst the procuring entity.
- g) Micro and Small Enterprises have to submit a declaration that it has not been blacklisted by the Central/ State Government or by any other agencies/corporations of the Central/State Government and has no dues pending in any of the offices of Central/ State Government or in any other agencies/corporations of the Central/State Government.
- h) Any Startup who has registered in Assam and obtained My Assam Startup ID (MASI) shall be eligible under the Policy.
- i) The Policy will not be applicable for the procurement under Externally Aided Projects (EAP).

#### **Special Provision for Startups**

Startups registered in Assam shall be eligible to avail the following benefits

- a) Issue of tender sets free of cost
- b) 50% exemption from payment of Earnest Money
- c) 50% waiver in payment of Security Deposit

#### **Mandatory Procurement from MSME**

- a) Every Department of the State Government or its Agencies or aided Institutions shall set an annual goal of procurement for Micro and Small Enterprises, with the objective of trying to achieve overall procurement of minimum 25 percent of total annual purchases of products and services rendered by Small and Micro Enterprises in a period of three years
- b) In case there are no supplier in the Micro and Small Enterprise Sector of the state who have the capacity to supply required items, department/ organization is free to procure from open market through stipulated processes.

#### **Verification of Local Content**

- a) Nodal Departments may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificate on random basis and in the case of complaints, if any.
- b) False declarations by suppliers regarding local content will attract debarment for 5 years and other actions as may be permissible under law.
- c) A supplier who has been debarred by any procuring entity for violation of this Policy shall not be eligible for preference under this Policy for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities.
- d) The Department shall issue suitable instruction for effective and smooth operation of this process so that:



- e) The fact and duration of debarment for violation of this Policy by any procuring entity are promptly brought to the notice of the Review Committee.

#### **Purchase Preference**

- a) Subject to the provisions of this Policy and to any specific instructions issued by the Nodal Department or in pursuance of this, purchase preference shall be given to local Micro And Small Enterprise/Startup .
- b) The Micro and Small Enterprise or Start-up who will quote the price closest to L1 who is not a Micro and Small Enterprise or Start-up will be given the price preference and supply order of 25% of total quantity of the items proposed to be procured.
- c) If more than one Micro and Small Enterprises or Start-ups quote the same price over the price of L1 and L1 is not the Micro and Small Enterprise or Start-up, in that case the 25% of total quantity of the items proposed for procurement will be equally divided among them.
- d) If the closest quoted rate is more than 20% of the L1 price in that case such Micro and Small Enterprise or Start- up will be offered only 20% of Price Preference provided such unit is willing to supply the 25% of total quantity of the items proposed for procurement.

#### **Exemption of Small Procurements**

- a) In procurements, where the estimated value to be procured is less than Rs.5 lakhs, such procurement shall be exempted from this Policy. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Policy.

#### **Government e-Marketplace(GeM)**

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

#### **Action for Non-compliance**

- a) In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials or procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Review Committee.

### **E. Policy on Public Private Partnership**

- a) This policy was formulated and notified on 16th Feb 2008, for accelerating the economic development of the State, improve physical infrastructure and trigger rapid industrialisation. This requires large investments and gestation periods. Moreover, the resources needed to fully meet the requirement of funds will put a huge tax burden on the people. Due to the locational disadvantage of the State, many infrastructure projects may not be financially viable, and viability gap funding may have to be obtained from the Government of India.
- b) Hence it was proposed to use the Public Private Partnership (PPP) model, where the Private

sector supplements scarce resources of the government, creates a competitive environment, and brings in private sector efficiencies.

- c) However, a PPP project involves a number of agencies such as the project sponsors, lenders, government and its agencies, regulatory authorities etc. Tendering procedures become complex and project agreements require greater financial and legal scrutiny.
- d) To achieve this goal, the Government of Assam brought out this PPP Policy for itself.

***What is a PPP project?***

A PPP project is an agreement between the Government or statutory or government owned Entity on one side, and a private sector Agency on the other side, for delivering an infrastructure service on payment of user charges.

For example, if a contract is entered into between the Government and a private sector agency for construction and maintenance of a road between two towns, where the private sector agency invests its money into making the road and maintaining it for a certain time and paying user charges to the Government from the toll collected by it, it will fall under the PPP project category. The advantage to the Government is that infrastructure is created without its spending tax money; the advantage to the private sector agency is that it earns a profit, and the public gets a new infrastructure.

PPP infrastructure projects typically involve transfer of public assets, delegation of authority for recovery of user charges, private control of monopolistic services and the Government sharing the risks and contingent liabilities.

PPP contracts are rather complex and must be structured carefully because of the involvement of a large number of agencies such as project sponsors, lenders, government and its agencies, regulatory authorities and sharing of risks and rewards between the public and private parties.

**Objectives of the PPP Policy:** The objectives behind issuing this policy are:

1. Leverage resources of the Government to invite private sector investment in infrastructure at best possible terms,
2. Protection of the interest of the users and securing value for public money
3. Selection of private sector developer through transparent bidding criteria,
4. To bring in uniformity of approach across various sectors and departments,
5. To prepare a list of projects for PPP and to get them implemented,
6. Establish an effective and efficient institutional mechanism for obtaining various clearances for the projects,
7. Provide a framework that clearly sets the risks, rewards and obligations of different participants,
8. Create a dispute redressal mechanism to handle disputes between parties.

**Infrastructure Sectors:** Some of the infrastructure sectors are listed here for clarity. (Please refer to the complete list in the policy document for completeness).

1. Roads, bridges and bypasses,
2. Inland water transport, riverports and container depots,

3. Wasteland Management,
4. Industrial parks, IT parks,
5. Tourism,
6. Health care facilities,
7. Urban Transport, etc.

**Institutional Mechanism:** The following institutional mechanism was set up by the policy to meet its goals:

**Apex Level:**

**Chairman: the Chief Minister of Assam, Members:** Ministers of Planning and Development, Finance, Industries, Power, Revenue, Health, Urban Development, Guwahati Development Department, Chief Secretary,

**Convenor:** Commissioner and Secretary P&D (PPP)

The Minister of the line ministries to which the project belongs will be co-opted to be a member of the apex authority.

**Powers and Functions:** The Apex authority will grant in principle approval for all projects proposed to be developed in PPP mode. All PPP projects having investment, or where the value of the underlying assets is over Rs 100 Crores, will require investment approval and approval for the developer from the Apex authority.

**Empowered Committee for PPP: Chairman:** Chief Secretary

**Members:** Additional Chief Secretary (P&D), Senior most officer of Finance, Principal Secretary (Revenue), Commissioner and Secretary (Forest), Secretary Legislative Department, Commissioner and Secretary of the line ministry to which the project belongs, *Convener:* Commissioner and Secretary (P&D)

**Powers and Functions:**

- a. Prepare and seek approval for PPP projects
- b. Sanction, authorise expenditure
- c. Develop and adopt Model Concession Agreements
- d. Recommend projects for Viability Gap Funding to GoI
- e. Deliberate and propose projects over Rs 100 Crores for approval of Apex Authority
- f. Review and monitor PPP projects
- g. Sanction PPP projects upto Rs 100 Crores
- h. Settle disputes between parties
- i. Sanction fund out of project development fund for project development activities

**PPP Cell:** The Empowered committee on PPP will be assisted by a PPP Cell, which consists of legal, financial consultants appointed under ADB assisted technical assistance program.

**Procedure for Selection and Approval of PPP Projects:**

1. **Identification:** State Government Departments/Agencies shall identify/ conceptualise

projects in consultation with the PPP Cell, and create a shelf of projects. Approval will be taken from the Empowered Committee.

2. **Feasibility Report:** Preliminary feasibility report will be prepared by the Departments in consultation with the PPP Cell, showing the need, contours, rough estimate of cost etc.
3. **In Principle Approval:** PPP Cell will forward the Feasibility Reports to Finance department, Planning and Development Department, and concerned line departments for their comments to be submitted within 30 days. After that the report will be placed before the Empowered Committee, who will examine the report and recommend for in-principle approval to the Apex Committee.
4. **Preparation of DPR:** On obtaining in-principle approval, the respective government department/ agency will prepare a detailed project report, indicating cost benefits of the project considering social and environmental factors. Consultants can be hired for preparing the DPR.
5. **Setting up a SPV:** Some projects may require substantial amount of land and statutory clearances, which will get transferred to the selected investor at a later date. This activity requires substantial time and efforts. It will be better to form a SPV with the investor being in JV.
6. **Selection of Investor:** Investor will be selected by Open Competitive Bidding process. Before calling for bids, the qualification criteria will be approved by the Empowered Committee on PPP.
7. **Approval of Investor:** The outcome of the bidding process will be submitted to the PPP cell, who will forward it to Finance, Planning & Development Department, and other concerned departments. On receipt of their comments, the proposal along with comments will be forwarded to the Empowered Committee or Apex authority for final approval. On approval, the SPV will be formed for the project and transferred to the investor. Where Viability Gap Funding is included, the GoI laid down procedure shall be followed.

**State Support Agreement:** The concerned department of the State Government will sign a State Support Agreement with the investor to facilitate early financial closure and implementation. State Support will be on:

- a. Political Support: Commitment on behalf of the Government that the project and its assets will not be nationalised during the concession period,
- b. Financial Support: In addition to the Viability Gap Funding from the Government of India, the State Government will also fund any gap in the funding in cash, or by concessions.

**Project Development Fund:** Planning and Development Department will provide the initial fund of Rs 20.00 Crores from the Untied fund.

*Settlement of Disputes:* In the event of a dispute, both parties will try to settle it amicably. If they fail, the matter will be referred to the Empowered Committee who will resolve the dispute in the light of various agreements. Failing this, the matter will be dealt with according to the Arbitration and Reconciliation Act.

## F. Salient Features of the Assam Public Procurement Act and Rules

The following are the Salient Features of the Assam Public Procurement Act, 2017 and APP Rules, 2020:

**Single Law:** before the enactment of the Assam Public Procurement Act and Rules there under the State did not have a single legislation to deal with public procurements. Instead, there were several rules and procedures issued by different departments under which procurement was carried out. Since then the new Act and the Rules (formed thereunder) have been made applicable, the public procurement practices in the state is governed through a single statute. The procuring authorities/officials are no more required to refer multiple documents.

**Provides Clarity for decision-making and action:** Procedures have been defined under the Rules with necessary clarity. This has simplified the task of a procuring authority or official. Now they can take decisions relating to procurement with confidence.

**Clear description of Processes:** the processes relating to receipt and opening of bids, evaluation, forming committees, pre-bid meetings, responding to queries, negotiation etc have been clearly defined, so that the different departments can follow them uniformly and there is no confusion.

**Standard Bidding Documents (SBD):** Section 20 Subsection 4 of the Act lays down that the State Government may provide model bidding documents for use by various procuring entities such as Government Departments, Autonomous Boards, Authorities, State Undertakings, Agencies, Corporations etc. for different classes of procurements like goods, works and services, following different procurement methods.

The procuring entities will prepare specific bidding documents derived from the notified SBD applicable for the type and value of the procurement. The standard provisions of the SBD will be used unchanged. Any case specific information will be placed in the variable sections, like the – Bid Data Sheet (BDS), Evaluation and Qualification Criteria, Schedule of Requirements, Special Conditions of Contract (SCC) etc.

**Special provisions for Emergency:** In emergent situations arising in a district of the State out of floods and other calamities, natural or otherwise, or urgency for upholding human rights, the relevant subject matter may be procured from a single source at or below the ceiling rates to be fixed by a District Emergency Procurement Committee. The District Emergency Procurement Committee shall decide the ceiling rates for the subject matter of procurement on the basis of *analysis* of the wholesale market or authorised dealer rates of that subject matter prevailing during the previous six months. The constitution of committee shall be as follows:

- |  |   |                  |
|--|---|------------------|
| (a) Deputy Commissioner                            | – | Chairperson      |
| (b) District Officer of the Concerned Department   | – | Member Secretary |
| (c) Sub-divisional Officers of Civil Sub- division | – | Members          |
| (d) Finance and Accounts Officer                   | – | Member           |
| (e) Concerned Technical Officer                    | – | Member.          |

An Annual report of all procurements made by the method of single source procurement shall be submitted, in writing, to the State Procurement Facilitation Cell through the concerned Administrative Department by the first quarter of the following financial year.

**New methods of Procurement:** The Act and the Rules have introduced and given legal sanction to new methods of procurement which make procurement more innovative and efficient, like the Swiss Challenge Method, e-Reverse Auction, Competitive Negotiations, Framework Agreements, e-Commerce, Community Procurement, etc.

**Execution of work through Construction Committees formalised:** The Act Section 28(n)

empowers the State Government to notify any other method of procurement (not already listed in Section 28) considered necessary in public interest. Procurement through “Construction Committees” has been enabled under this provision for execution of works under the MP-LADS, MLA-ADS, Untied Funds schemes.

District officers are empowered to assign execution of small works identified under these schemes to Construction Committees constituted as per rules. The committees can procure materials through the Spot Purchase method upto the financial limits defined, and get the work executed through hired/ outsourced labour. Value of the work should not exceed Rs 50 Lakhs.

**State Public Procurement Portal:** In order to improve transparency and the ease of doing business, a State Public Procurement Portal (SPPP) has been set up by the Assam Government. All matters related to procurement are posted on this portal. It is freely accessible to the public, without requiring any membership or fees. All procuring entities are required to post procurement related information on the portal and to keep it current.

Information which can be seen on the portal is:

- bidder registration documents
- pre-qualification documents
- list of registered bidders
- bid documents, their amendments, and corrigenda
- contracts, their amendments and cancellation
- debarred bidders

The information on the portal is treated as a public record, and maintained as per the Assam Public Records Act. All documents are either digitally signed, or are scanned copies of signed documents, to ensure their authenticity.

Thus, no bidder or any member of the public has to wait for a printed copy of any document to come to him by post, he can directly download everything from the internet. This portal makes a great contribution towards openness and transparency.

**Code of Integrity:** A code of integrity has been defined which applies to both, bidders and procurement personnel (staff & officers, of any level, whether or not they are involved in the procurement process). This code has been framed and implemented to ensure honesty, fairness, and trustworthiness in procurement operations and to instil confidence in the minds of the bidder community and the general public about the fairness and openness in the way public money is being spent.

**Conflict of Interest:** The Procurement Act and Rules have defined situations where there could be a conflict of interest for staff and officers or bidders in the procurement process, and how to deal with them.

**Confidentiality:** In the bidding documents, bidders are often required to disclose sensitive commercial information, such as proprietary information, trade secrets and commercial or financially sensitive information (like prices, discounts, designs, drawings, etc) that can adversely affect the intellectual property rights or legitimate commercial interests of bidders. It is therefore the responsibility of the procuring entity to treat such privy information with the requisite care and confidentiality.



This need has been recognised and embodied in the Act, which lays emphasis on maintaining confidentiality of such information. Procuring entities have been prohibited from revealing information by Section 49(1) of the Act, which could lead to:

- a. Impeding enforcement of any law,
- b. Affect security or strategic interests of India,
- c. Affect intellectual property rights, or legitimate commercial interests of bidders,
- d. Affect the legitimate commercial interests of the procuring entity (say, when the procuring entity may be a bidder in another procurement)

Section 49 (2) of the Act mandates that all communications from a bidder in procurement related matters should not be disclosed to other bidders or to an unauthorised person.

*Protection of actions taken in Good Faith:* During procurement, many actions have to be taken to secure the financial interests of the procuring organisation, but many of these actions, taken in good faith, can be seen otherwise by agencies responsible for oversight. To protect procurement officials when taking such actions, the Act provides for safeguards. Further, some actions though taken in good faith, may cause loss or damage to another party. The Act protects the procurement personnel against lawsuits resulting from such actions. For example:

Section 51 of the Act provides specific protection of actions taken in good faith. All persons involved in procurement under this Act are deemed to be public servants. No suit, prosecution or legal proceedings can be instituted against any officer/ employee/ person for loss/ damages caused or likely to be caused by actions taken by them in good faith.

It means that if a lawsuit has to be filed, it must be filed against the procuring entity, and not against the personnel of the procuring entity.

*Single Source procurement:* Section 31 subsection (2)(b) of the Act is a special instance, which provides that procuring entity may engage in negotiations with the (single, and only) bidder in good faith. On the face of it, the situation where quotation is taken from only one bidder, and then negotiation held only with him, may get viewed with suspicion.

## G. Repeal and Savings

Most of the existing instructions relating to procurement procedure have been covered in the new Act. In order to avoid duplicity of rules wherever there are new ones, the old rules have been repealed. Where old rules are not covered in the new Act, such rules have been saved.

All regulations, orders, notifications, departmental codes, bylaws, official memoranda, or circulars relating to procurement of goods, works and services, which are in force on the date of commencement of these rules, insofar as covered by these rules or are inconsistent with these rules, are hereby repealed to the extent covered by these rules.

Provided that such repeal shall not affect the previous operation of regulations, orders, notifications, departmental codes, bylaws, official memoranda, or circulars so repealed and the procurement process commenced before the commencement of these rules shall continue as per the provisions of the regulations, orders, notifications, departmental codes, bylaws, official memoranda, or circulars so repealed.

Provided further that the regulations, orders, notifications, departmental codes, bylaws, official memoranda, or circulars containing provisions not covered by these rules and not in contravention of these rules shall continue to remain in force and apply accordingly.

## Need Assessment and Procurement Planning

The following topics have been covered in this Module:

- Need identification and description;
- Defining Technical Specifications;
- Importance of Procurement Planning;
- Preparation of Annual Procurement Plan;
- Preparation of Estimates.

### 1. Need Identification and Description:

#### 1.1 Introduction

Let us analyse a case of two towns on the either bank of river and only mode of transportation between these two towns is by boats.

Transportation across the river by boats is not efficient and has its own constraints. Thus, residents of the towns felt the need to have a more efficient way of transportation of people and goods across the river. Hence, there arises the need to have a bridge across the river. The issue had been raised for consideration of local administration. The local administration considered the need of the residents of the towns as important and decided to take up the matter further. The local administration forwarded the need to the Technical department i.e. PWD who had been advised to come up with a proposal to meet the need for transportation by proposing a suitable Bridge.

The officials of PWD shall undertake the assignment and study the requirements precisely. PWD will then decide whether they should go for rope way bridge or concrete bridge or some other type of bridge. They will also decide whether they should go for solely government owned bridge or involve public private partnership etc. These and many other similar decisions are taken at the planning stage and poor procurement planning may lead to inefficiencies and sub-optimal acquisition of assets, loss of time, effort and cost. Proper planning helps in evaluating all the options carefully to satisfy the need before deciding on the final approach for satisfying the requirement.

*This example illustrates the importance of assessment of need and of proper planning in public procurement by the authority to address the need.*

#### 1.2 Guiding Principles for Need Assessment

1.2.1 **Section 5** of the APP Act and **Rule 3** of the APP Rules covers the determination of need for procurement. As per the Act and Rules, the following are the important requirements in the process of determining the need:

- (a) That the proposed procurement is essential for public services. It shall be the obligation and primary responsibility of the concerned procuring entity to ensure that no procurement that is not clearly essential to public services is made by it.
- (b) That the need is neither artificially created nor exaggerated with the intent to channel benefits to certain individual(s) or organization(s) – also means economy in requirement.

1.2.2 The quality, including the technical, performance and qualitative characteristics, the specific

quantum and the extent or scope of the subject matter of procurement relating to the need so determined shall be clearly spelt out by the procuring entity to avoid unwarranted expenditure or idle inventories. The procuring entity shall not include superfluous and non-essential quantum or features of the subject matter of procurement or exceed scale, consumption or usage limits of requirements as laid down in its extent or scope and shall ensure that:-

- (a) the purpose or solution sought to be obtained by the proposed procurement is sustainable;
- (b) the maintenance costs, where applicable, are reasonable and justified;
- (c) the proposed subject matter of procurement is compatible and interoperable with existing infrastructure or system.

1.2.3 The technical specifications, detailed project report, terms of reference shall be so developed as to ensure value for money, a level playing field and wider competition in procurement, where applicable. The technical specifications shall to the extent practicable:-

- (a) be based on the national technical regulations or recognized national standards, wherever such standards exist, or engineering, building codes and in their absence, be based on the relevant international standards, provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification;
- (b) shall emphasize sustainability criteria such as efficiency, optimum fuel or power consumption, low maintenance cost and environment criteria such as reduced pollution, emission, noise levels, etc. and shall comply with applicable legal and statutory regulations.

1.2.4 The procuring entities shall work out the estimated costs in a realistic and objective manner with due diligence, this being a vital element in procurement processes like approvals, establishing reasonableness of prices at the time of evaluation of the bids, etc.

1.2.5 The procuring entities shall consider the appropriateness of procurement of common use and other replacement goods, machinery equipment, etc. on buy-back or with exchange value by trading old, unusable items for new ones to avoid dead stock and useless inventories.

1.2.6 The procuring entity shall ensure transparency and not restrict dialogue for determining solutions for the need only with certain individuals or organizations giving them undue advantage by way of access to inside information not disclosed or disclosed late to others.

1.2.7 The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorised or required to do so by the Act or the Rules or guidelines made thereunder or by the provisions of any other law for the time being in force. The procuring entity may decide on the limitation of participation of bidders only under circumstances as allowed u/s 6 of the Act and along with a proper justification thereof.

1.2.8 All procurement entities shall maintain and preserve documents relating to such assessment and determination of the public need for procurement indicating the nature of the essentiality for public services as Class "B" records as prescribed in the Assam Record Rules.

### 1.3 Key Issues Addressed During Need Assessment

1.3.1 Defining of procurement needs and identification of appropriate procurement method(s) to satisfying those needs.

1.3.2 Techno-economic evaluation of various alternatives solutions and selection of most appropriate of them based on following criteria:

- (a) Compatibility and inter-operability with existing infrastructure or systems
- (b) Ascertain sources of fund to meet the estimated cost
- (c) Sustainability criteria and legal requirements of environment or pollution control and obtaining clearance from local authorities, if required
- (d) Compliance to technical, administrative, and budgetary sanctions

## 2. Developing Technical Specifications:

### 2.1 Developing Specifications

2.1.1 Specifications are the detailed technical, qualitative, and performance requirements of procurement. In case of goods, they should indicate the material composition, physical, dimensional and performance parameters, tolerances, if any, manufacturing process wherever applicable, test schedule, preservation and packing, among others. In case of works, the specifications mentioning the materials to be used (and their specifications, tests, storage), method of executing the work (methods and records of measurements, acceptance tests, any temporary work involved) and schedule of rates as applicable. In case of services, instead of specifications, the qualitative requirements including performance parameters, roles and responsibilities, etc., are specified in Terms of Reference (TOR) and Schedule of Work (SOW). Developing specifications has the greatest impact on value-for-money in procurement. The technical specifications should provide a level playing field for all prospective bidders. So the specification should

- (a) meet essential needs,
- (b) be objective, functional, generic, and measurable,
- (c) set out required statutory requirements – type test/approval, pollution, noise, emissions etc.
- (d) set out qualification requirements – national/international certifications, quality standards - encourage wide competition in procurement,
- (e) set out required technical, qualitative and performance characteristics, and
- (f) Should be neutral and non-restrictive in nature, as far as possible.

### 2.2 Types of Specifications

#### 2.2.1 Proprietary Specifications

- a) Patents or Intellectual property rights to some specifications are owned by only one organisation. These are protected by intellectual property rights.
- b) These specifications are not available with the outsiders including procuring entity. Hence, the firm's certificate of quality is accepted. However, essential technical and performance characteristics required for inspection must be mentioned in the specifications.

**Example:** There could be some medicines (e.g., cancer treatment), high end equipment/spares or specific technologies (e.g., base isolation technology for earthquake proof construction) whose patents are owned by certain manufacturers/firms. In this case, proprietary specifications are used to procure these items.

### 2.2.2 Brand or Trade Name

- a) In public procurement, specifications by brand name is not allowed. Using brand or trade names along with model number gives sufficient information for procurement. The quality of branded products is generally reliable. However, the procurement of branded products cannot ensure value-for-money. The manufacturer's price list often includes heavy margins for wholesalers and retailers. However, in public procurement, if it is inescapable, mentioning of brand name with "or equivalent" must be included. Unless the alternatives in the market are nearly equivalent and comparable, the stipulation "or equivalent" poses problems at the stage of evaluation of bid. This is appropriate for commonly used items, where quality is more important than cost or where it is not possible to prepare technical or performance specifications.

*For example, Consumables, Vehicles (Mahindra bolero, Tata Sumo or equivalent), etc*

### 2.2.3 Tailored Technical Specifications

- a) Tailored technical specifications give a lot of details on how to achieve what is required.
- b) Basically, it is used when commercially available products do not meet the requirements even with minor changes. Therefore, it required the supplier to design a tailor-made product.

This type of specification limits the ability of supplier to offer more cost-effective solutions and puts the bulk of performance risk on the buyer. In addition, if supplier designs a tailor-made product, it leads to restricted competition and added cost and time. Therefore, this type of specification is appropriate when:

- Buyer has design expertise, which supplier do not have
- Procurement is of high value. critical and of complex nature.

***Example: the research team of an technical university or institute may require some specially designed items for its research activity, which are not commonly available in the market.***

- c) As per Rule 12 (1) (iii) of APP Rules in case of 'tailored' specification, care should be taken to ensure that unnecessarily restrictive or "tailored" specifications, Terms of Reference (ToR), Statement of Works or terms and conditions are not used that may discourage wide competition or unnecessarily exclude certain categories of prospective bidders from participation.'
- d) Thus, 'tailored' specification are to be used only in exceptional circumstances when commercially available products do not meet the requirements even with minor changes.

### 2.2.4 Tailored Performance Specifications

- a) Performance Specifications describe only essential performance requirements and allow the supplier to establish the best solution. Suppliers can use their full expertise and innovation to develop the optimum solution.
- b) This type of specification gives value for money and widens the competition. The supplier carries the bulk of performance risk.
- c) These specifications may include:
- What is to be performed and the required levels of outputs,

- Operational and maintenance performance,
  - Maximum costs; and
  - Rules for measuring performance.
- d) This type of Specifications may be appropriate when:
- Supplier possess greater design or functional expertise than the purchaser,
  - Technology in changing rapidly in supplying industry,
  - Innovation is important.

**Example:** *The election commission of a country may lay down tailored performance specifications to procure electronic voting machines. In this case, government depends on the different vendors to come up with solutions.*

Since Purchaser rely heavily on supplier's capability, it is particularly important to pre-qualify suppliers when using performance specifications. It is also important to communicate how the bids will be evaluated, and the criteria to be used for measuring whether the desired performance has been achieved. The purchaser requires less effort in developing specifications. However, this is matched by increased complexity of evaluation of bids in procurement, especially where the supplier is using technology with which the buyer is unfamiliar.

#### 2.2.5 Technical, Performance and Quality Standards

- a) Standards enable purchasers and sellers to speak the same language using common parameters, terminology or symbols. There is less effort required in developing the specifications for evaluation of bids. These specifications must be preferred if they meet the requirements adequately. This type of specifications helps offer wide competition and standardization of production, thereby giving value-for-money and shorter lead times.
- b) The different categories and sources of standards include:
- National Standards (Bureau of Indian Standards, National Building Code etc.)
  - International Standards (International Organization for Standardization (ISO))
  - Industry standards

**Example:** *Procurement of solar water pump for agricultural purpose by Director of Horticulture by specifying the national standards i.e. Bureau of Indian Standard prescribed for that product.*

#### 2.2.6 Specifications Involving Sample

- a) In public procurement of goods, purchase is done as per drawing, standards, specifications and so on. Purchase of goods as per sample is discouraged. In national or international standards, for certain items, there are built-in sample clauses. These clauses are stipulated to illustrate characteristics such as shade, tone, size, make-up, feel, finish, workmanship etc. In some specifications, there may not be a sample clause but such indeterminable characteristics may not be specified and may be left to be agreed between seller and buyer. In either case, supply is to be in conformity with an agreed sample in such respects only, whereas for the remaining characteristics the supplies must be in conformity with the laid down standards and specifications.
- b) In such cases also, calling for sample along with tender and deciding the tender on basis



of evaluation of sample may NOT be done. If desired, a purchaser's sample may be put on display for prospective tenderers, indicating the example of desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet – in addition to meeting the specified standards, specifications, or drawings. In the tender enquiry, the methodology and tests that will be done should be made clear for ensuring compliance of supplies (and pre-production sample, if indicated) with the purchaser's sample. Such purchaser's samples would also have to be later provided to successful bidders for guidance. If required, in addition to or instead of the purchaser's sample, provision for submission of a pre-production sample to the inspection agency/user by successful bidder(s) may be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply.

**Example:** Procurement of “Long Lasting Insecticide Treated Mosquito Nets”. The relevant national specifications lay down that the purchaser and supplier should come and form an agreement on feel and finish of the cloth based on agreed samples.

### 2.2.7 Terms of Reference for Consultancy Services

- a) As per Rule 25 (3) (d) the “Terms of Reference”, which defines the assignment, objectives, scope, outputs, outcomes of the consultancy services and provides necessary background information thereon shall be carefully framed in precise terms by the procuring entity keeping in mind the relevant public need sought to be satisfied. It should allow prospective consultants to propose their own methodology and work schedule, particularly when the assignment is complex. The TOR shall, inter alia, include the following:-
  - (i) Precise statement of the objectives of the assignment;
  - (ii) Context or background of the project and relevant information;
  - (iii) Scope of the services to be provided;
  - (iv) Outline of the tasks to be carried out and schedule of completion thereof;
  - (v) Final output and/or outcome that will be required to be delivered;
  - (vi) The support and inputs that shall be made available to facilitate the consultancy;
  - (vii) Time-frame for completion of the consultancy assignment; and
  - (viii) Requirements of Key Experts.

## 3. Procurement Planning

### 3.1 Importance of Procurement Planning

There is an important saying that if you fail to plan, then you plan to fail. Advance procurement planning is necessary so that appropriate procurement strategies can be developed to achieve the larger goals of procurement. Appropriate procurement strategies cannot be built in ad-hoc and emergency procurements. Procurement plans facilitate a structured and considered approach to the management of procurement activities. Procurement plans must be undertaken both for centralised and decentralised procurements. Procurement plans shall also have interface with budgetary allocations.

### 3.2 Preparation and Content of Annual Procurement Plan

- 3.2.1 **Preparation of Procurement Plan is a Statutory Requirement:** As per **Sub-section (4) of Section 5** of the Procurement Act, every procuring entity shall prepare a Procurement Plan

along with their proposal for Annual Budgetary Allocation for a financial year and Plan shall be updated as per the approved annual budget for the Entity. The updated Procurement Plan shall be approved by the concerned Administrative Department within 15 days of receipt of Budget communication from the Finance Department of the State Government.

### 3.2.2 Content of Annual Procurement Plan

As per the Act and Rules, the following are the minimum requirements of the Procurement Plan:

- i. A brief description of Goods, Works, and/or services for which the procurement action is to take place during the respective financial year;
- ii. Major Specifications– Quantity, Type, Quality, configuration, scope, etc.;
- iii. Purpose and objective of the Procurement;
- iv. Its essentiality for public purposes;
- v. Estimated value;
- vi. Details of source of Funds;
- vii. The proposed method of procurement pursuant to the provisions in the Act and the Rules made thereunder, specific reasons for adopting any method other than Open Competitive Bidding
- viii. Any provision of preference in accordance to Section 6 of the Act
- ix. The review threshold as per the DFP Rules of the State Government
- x. The time-frame and time schedule for the key procurement activities
- xi. The specific limitation on participation of bidder, if Limited Bidding is proposed;
- xii. In case of works (including software development), the time-frame for completion to assess requirement of fund in subsequent financial years or, in case of goods or services, the time-frame for delivery.

### 3.2.3 Steps to Develop Annual Procurement Plan

Procurement entities must prepare annual procurement plan ahead of the budgetary exercise and the Annual Procurement Plan shall set out:

- a) Procurement objectives,
- b) Finalization of the requirements including integrating the demand, and bulking or dividing the total requirement into appropriate packages, in the interest of efficiency, economy and timely completion,
- c) Procurement profile of procuring Entity,
- d) Procurement systems, processes and practices,
- e) Procurement strategies,
- f) Ways to fulfil social or development objectives by procurement policy, and
- g) Deciding on the mode & method of procurement

### 3.2.4 Review & Updating of Procurement Plan

- a) Annual Procurement Plan shall be prepared by each procuring entity along with the **proposal** for Annual Budgetary Allocation for the ensuing financial year. The Annual Procurement Plan shall be updated as per the approved Annual Budget Allocation for the entity.
- b) Subsequent reviews and updating can be undertaken as and when necessary, based on changes in the requirement during the period elapsed and other factors requiring modifications in the plan. The Procurement Plan entries are compared to actual position of the execution and revisions incorporated to make it realistic at that point of time.

## 4. Preparation of Estimates in case of Civil Works

### 4.1 Milestones in Civil Works Procurement Lifecycle

- a) Preparation of a preliminary project report followed by the Detailed Project Report (DPR)
- b) Preparation of procurement plans giving brief details of the work along with schedules of the various steps involved
- c) Preliminary estimates, Administrative approval, Expenditure sanction, Technical sanction
- d) Topographical survey, soil investigation etc.
- e) Preparation of drawings related to architectural, structural, HVAC (Heating, Ventilation and Air-conditioning) and other services including IT services and Building Management Services (BMS)
- f) Clearances from local authorities
- g) Preparation of detailed estimates including BOQs
- h) Preparation of tender documents including terms and conditions
- i) Inviting bids
- j) Evaluation of bids, submission of recommendations and award of work
- k) Execution

### 4.2 Content of Preparation of Preliminary Project Report

- a) Background of the work/ project justifying the need for the work;
- b) Details of scope of the project;
- c) Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate;
- d) Availability of land - 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;
- e) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured;
- f) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance- This shall indicate the details of Concept Plans/Preliminary Drawings prepared and their approval by the requisitioning authority;

- g) Rough Cost Estimate: Department 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;
- h) 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;
- i) Cash flow: This will show year-wise requirement;
- j) Source & availability of funds - the manner of transferring the funds to the executing agency to be spelt out;
- k) Any other relevant documents.

### 4.3 Contents of Detailed Project Report

4.3.1 The Detailed Project Report gives full details of the proposed project. It describes the project and brings out its benefits. The time required for execution and the estimated costs are also given. The DPR enables the top management of the procuring entity to take a decision on proceeding with the project. On receipt of in-Principle Approval of the project, the procuring entity shall finalize the Detailed Project Report giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition.

4.3.2 Detailed Project Report shall have following Contents

- a) Reference to Concept plan/ preliminary drawings and their acceptance - this shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority;
- b) Details of scope of the project indicating clearly the list of Engineering Services (Mechanical/ Electrical/ Plumbing) as well as Operation and Maintenance included or not included in the DPR/PE;
- c) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project. Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of life Cycle Cost may also be considered;
- d) Time of the completion – This will consist of two parts, one for pre- construction activity till award of the work and the other one for the execution;
- e) Details of land required along with land plan schedule to implement timely land acquisition procedures;
- f) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable;
- g) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the IARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State

Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable;

- h) List of Approval of Statutory Bodies required;
- i) Annual plan allocation and cash flow;
- j) Systems to be adopted for project monitoring;
- k) Works accounting system;
- l) Quality assurance system/ mechanism;
- m) Bidding Systems

#### **4.4 Preliminary Estimates, Administrative Approval, Expenditure Sanction, Technical Sanction**

- a) Administrative approval is the formal acceptance of a proposal by the competent authority in the government based on preliminary estimates.
- b) Expenditure sanction accorded by the Ministry/Department indicates that the funds for the work have been provided.
- c) Technical sanction is a confirmation that the proposal is technically sound, and the estimates prepared are based on reliable data.
- d) No work should be taken up and liability incurred until all the stages mentioned above have been completed.

#### **4.5 Preparation of Drawings related to Architectural, Structural, HVAC (Heating, Ventilation and Air-Conditioning) and other services including IT Services and Building Management Services (BMS),etc.**

The preparation of design and drawings can be, in house, or by a competent consultant. The drawings should be in such detail as to enable a prospective bidder to prepare an accurate bid. Care should be taken to ensure that the architectural, structural, Heating, Ventilation and Air-conditioning (HVAC) and other drawings are coordinated without conflicts between them. This would help immensely in further activities. The tendency to tender with incomplete and sketchy drawings should be avoided as it is fertile ground for variations and disputes during implementation. Spending some time in preparing detailed and coordinated drawings avoids many problems during implementation. While designing, energy efficiency and Green Building concepts should be considered as also the protection of the environment.

#### **4.6 Preparation of Detailed Estimates including BOQs**

- a) The preparation of estimates including BOQs is an important step in the procurement cycle and form an important part of any contract. A good and accurate BOQ avoids many problems in tendering and execution.
- b) Preliminary estimates are first prepared on area schedule rates basis followed by a detailed estimate based on quantities taken off detailed drawings. The rates contained in the applicable schedules are used. Depending on the gap between the year of tendering and the latest schedule and timing of the project execution, corrections to the schedule rates must be applied. Rates not contained in the schedules are worked out at market rates.

### **5. Estimated Cost for Procurement of Goods**

- 5.1 A per Rule 3 (4) of the APP Rules “The procuring entities shall work out the estimated costs in

a realistic and objective manner with due diligence, this being a vital element in procurement processes like approvals, establishing reasonableness of prices at the time of evaluation of the bids”.

**5.2** Various methods used to work out the estimated cost for the goods are given as under:

- a) The Prevailing Market Price is ascertained by market survey or budgetary quotations from one or more prospective suppliers or published catalogues or MRP printed on the item. It may also be noted that the MRP printed on the item has big margins and hence due care need to be taken to work out the estimated cost.
- b) The procuring entity should normally collect the documents and authenticate the same. It is also ascertained by costing analysis based on costs of various components or raw materials. Price of a similar or nearly equivalent item may also be taken for the purpose.
- c) The Market Intelligence Cell (MIC) or External Expert Costing Agencies may also be used for high value procurement.
- d) All these methods are not mutually exclusive. These methods can be supplemented with the escalations to cater for inflation, price increases of raw materials, labour, energy, statutory changes, price indices and so on, to make them usable in conditions prevailing currently.
- e) The Procuring Entity may also access appropriate websites for the latest trends and price indices of indigenous items. For metals and other minerals, Procuring Entity may access websites of Minerals and Metals Review, Metal Prices.com and Asian Metal.com etc.
- f) Ministry of Commerce also publishes regular data on price indices and Price Variations. Procuring Entity may also, subscribe to important publication like business/commercial newspapers. A ready database of important price indices derived from above sources may be kept updated for ready reference.

**6. Estimated Cost for Consulting Services**

- a) As per Rule 25 (3) (a) of the APP Rules “Upon having decided to procure consultancy services for a particular purpose in relation to a public need the procuring entity shall first prepare, in simple and concise language, the specific objectives and scope of the required consultancy assignment including the desired outputs or outcomes thereof, the approximate time period that may be required for completion of such consultancy and an estimate of the likely expenditure involved with reference to the prevalent market conditions”.
- b) Thus, the estimated cost for the services must consider the various aspects of the scope of the assignment formulated as per Rule 25 (3) (d) of the Rules, the inputs required, the requirement of non-key and key experts, time frame for the services etc.

**Example:** Suppose a procuring entity is planning to hire a consulting firm (consultant) for preparation of a detailed project report for a infrastructure project. The consultant need to provide the service of different experts including Engineers, Finance Expert, Environment Expert, Legal Expert, etc. Considering the complexity of the project, it is also proposed to engage a team leader with engineering background and having 10 years of experience in similar projects. The cost for the proposed consulting service may be calculated as detailed below:



**ESTIMATION FOR MANPOWER COST**

S. No	Experts	Input Days	Par day Fee (INR)	Total Fee (INR)
1	Engineer with minimum of 5 years' of experience	60	10,000/-	6,00,000/-
2	Team Leader (Engineer with minimum of 10 years of experience)	15	20,000/-	3,00,000/-
3	Finance Expert	15	15,000/-	2,25,000/-
4	Legal Expert	5	10,000/-	50,000/-
5	Environmental Expert	10	15,000/-	1,50,000/-
	<b>Total Estimated Manpower Cost</b>			<b>13,25,000/-</b>

**ESTIMATION FOR OTHER COSTS**

S.N	Description	Basis	Amount	Remarks
1	Travel, Accommodation and other incidental cost for the project staff.	lumpsum	3,00,000/-	Past Experience insimilar project
2	Overhead Cost/ AdministrativeCost	10%	1,62,500/-	10% of manpowertravel & Accommodation cost
3	Documentation & Dissemination Cost	Lumpsum	2,00,000/-	As per the requirement
	<b>Total Estimated Cost (Others)</b>		<b>6,62,500/-</b>	

*So the total estimated cost for the consulting service shall be Rs 19,87,500/- ( i.e. Rs 6,62,500/- + 13,25,000/-)*

## COST ESTIMATION & BIDDING PROCESS

### Learning Outcomes

After studying this module, you will be able to

- 1) Methods of Cost Estimation
- 2) Costing of Consulting Services
- 3) Bidding Process
- 4) Advantage of Bidding
- 5) Disadvantage of Bidding
- 6) Content of Bid
- 7) Types of Bidding
- 8) Single Stage Single Envelope Bidding Procedure
- 9) Single Stage Two Envelope Bidding Procedure
- 10) Two Stage Bidding

### 4.1 Methods of Cost Estimation

Procurement at the “right price” is one of the key objectives of any procuring entity. Not buying at right price shall lead to budgetary deficit and sub-optimal use of budgetary resources. The biggest challenge for a procurement entity is to ensure that the procurement is done at a right price. The procuring entity need to take adequate measure for ensuring “right price” for the goods, services or works it intends to procure. Realistic estimation of the cost of procurement is one such important measure to get the price right.

It is important to make a realistic estimation of the cost before initiating the procurement process. The estimation of the cost prior to the initiation of the actual procurement process for price discovery and acceptance shall be immensely helpful for the procuring entity to verifying that adequate funds have been earmarked for this procurement and for determining “reasonableness” of the price before its acceptance.

Ascertainment of price reasonableness is essence of any public procurement. It’s the responsibility of the procuring authority to ensure reasonableness of any expenditure by it using public fund.

There are different methods being used for cost estimation of the subject matter of procurement. The most popular methods are:

- (i) Review of Historical Price Method
- (ii) Catalogue Prices
- (iii) Budgetary Quotations
- (iv) Rates of other organisations
- (v) Cost Calculation,

These methods are not mutually exclusive. They may be used in conjunction if the situation so demands.

(a) Review of Historical Prices:

This method is used in the case of procurement of frequently procured items, like consumables, stationery, office furniture, seeds, fertilisers, vehicle hiring, printing, etc. Before making a fresh procurement, the procurement contracts of previous (three) years are seen and the price / quantity of purchase is noted. Only contracts where supply was made by the supplier are considered. Procurements made in an emergency or abnormal circumstances are not considered because the contract might have been placed at a higher rate. The prices obtained in normal process in recent years by the procuring entity are considered for trend analysis and accordingly estimation is done for the forthcoming procurement.

If the historical prices show a downward trend, then the estimated price of procurement at the current date might be lower. In case of an inflationary trend, the “Last Procurement Price” adjusted for inflation is taken as the estimate of cost.

Example: The last year audit fee paid to the external auditor for the audit assignment is taken as the reference point for estimating the cost of audit for the current year.

(b) Catalogue Prices Price Method:

There are many items, like hand tools, furniture of well-known firms, mattresses, linen items, office supplies, etc where manufacturers publish their catalogues showing the Maximum Retail Price (MRP) of the item. MRP gives an indication that a lower price may be obtained in a competitive tendering situation, because many suppliers/dealers may bid at a discount to the MRP.

In this case, the quantum of discount on the catalogue price shall be dependent on the quantity of procurement and place of delivery and other terms and conditions having impact on the cost of supply.

(c) Budgetary Quotations Method:

A ‘budgetary’ quotation is an informal offer taken from a supplier to frame a ‘budget’ or make a provision of funds for the subject matter of procurement. Often budgetary quotations are taken from local/reputed suppliers or authorised dealers. A budgetary quotation is a good basis for estimation of the cost.

(d) Rates of other Organisations Method:

This method assumes that the same item or a similar item may be procured by other organisations or other offices, who can be approached for getting their historical prices.

*Example:* Suppose blankets are required to be procured by a district authority under a particular program. In such case the price from the other districts who have procured blankets in recent future may to considered for the estimation of the current price.

(e) Cost Calculation Method:

This technique may be normally used by the procuring entities engaged in manufacturing and construction activity for estimating the procurement cost of items/works contract which they intent to procure provided they are aware of the of materials to be used and the process to be followed for manufacturing or construction, as the case may be.

In this method, the cost required to manufacture the item or construct the civil works, as the case may be, is first determined using their knowledge and expertise in the concerned area. To this cost, an element of profit is added to arrive at the cost at which the item must be purchased (or sold).

Cost estimation is normally done with the help of a technical expert having substantial knowledge on the matter.

*Example:* This method is being used by public works department for estimation of the cost using Schedule of Rates and Bill of Quantities.

#### **4.2 Costing of Consultancy Service:**

As in the case of procurement of Goods and Works, it is important to estimate the costs likely to be incurred in case of a consulting service with reasonable accuracy. This cost can be broken down into three heads:

- Remuneration
- Reimbursable expenses
- Taxes and Duties

##### **(a) Remuneration:**

Consultancy work may be carried out by a Consultancy Firm or individual consultants. Consulting firms will provide their experts and supporting staff, for whom they will charge remuneration. Individual consultants too will charge their remuneration rate.

Remuneration of the consulting team can be grouped into:

- remuneration for Foreign members in the team to be engaged.
- remuneration for National members in the team to be engaged.

Members in the consulting team also divided in to two categorized i.e., key, and non-key members.

If the consultancy work will require inputs from foreign experts, their remuneration should be estimated in a foreign currency. For national resource/experts, it should be estimated in Indian Rupees.

Key resources/experts are persons whose expertise is crucial for the success of the consultancy work. Non-key resources are personnel required to perform subsidiary tasks, for example carrying out surveys, and/or support the work of the Key members. Key & Non-Key members may be foreigners or Indian Nationals, as required by the project, and cost estimation should be done in the applicable currency.

The remuneration to be given to an individual consultant or to the consulting firm towards the manpower is calculated based on a remuneration rate, and the time spent by each resource person on the project. Remuneration rate will depend on the level of expertise required from the concerned resource, i.e., their qualifications and experience. For a resource/expert with higher qualifications and long years of rich experience remuneration may be higher than for a less qualified and experienced person. Remuneration will also vary depending upon the type and complexity of input required from the expert. The procurement agency may obtain remuneration rates being charged by other experts for similar work, and the different allowances being paid to them, while estimating the remuneration rate.

Remuneration rate charged by consulting firms has the following components:

- basic salary
- social charges (like PF etc)
- overheads (of the consulting organisation)

- Fees or Profit (of the consulting organisation)
- Allowances

Overheads are charged by consulting firms as per their company policy and represent costs to maintain the organisation. Fees or Profit is the gross profit that the consulting organisation will make because of the services provided by the consulting team engaged for the project. Social Charges, Overheads and Fees are usually expressed as a percentage of basic salary, though they could be in absolute amounts also.

Allowances (like overseas allowance, children's education etc) may be paid by a consulting firm to their experts based on company policy and/or company's agreement with the expert. However, the procuring organisation should incorporate a fair amount towards cost of allowances in their estimate or rate of remuneration.

For estimating the time spent by a staff on the project, the procuring organisation must prepare a bar chart based on their own estimate of the consultant's inputs required, showing the type of experts needed, the time for which they are needed (in months or days), and the time- period during which they will work on the project. For example, if an estimate is being prepared for Dairy Farming, we may need a Dairy Expert for six months, an Animal Feed Expert for four months at the same time as the Dairy expert, and a Farm Design expert for two months after the work of the other experts has been completed.

By multiplying remuneration rate by the time duration, the remuneration cost for staff can be calculated. A sum of remuneration costs for all staff will give us the total Remuneration Cost.

**(b) Reimbursable Expenses:**

These are the estimates of expenses which will be incurred by the Consultant during the execution of the project, on heads like:

- Travel expenses of Staff (for mobilisation and demobilisation)
- Local travel expenses (within country)
- Per-Diem allowances (for living expenses)
- Computer expenses
- Communication expenses
- Expenses for Survey work, Studies, Laboratory tests, Soil Testing etc
- Expenses for any work to be done by the consultant on behalf of the Client
- Expenses for Consultant's Office (rent, electricity, insurance, etc)
- Training and Capacity Building activity
- Report Translation and printing
- Contingency (for unforeseen expenses)

It may be noted that the amount estimated for Reimbursable expenses is a ceiling amount. The whole amount need not be paid. The consultant is "reimbursed" on the basis of work actually done by him and expenses actually incurred by him. Reimbursable expenses which will be incurred in Indian Rupees will be reimbursed in Rupees only.

**(c) Taxes & Duties:**

When preparing cost estimates, it is important to take into account local indirect taxes (for example,

VAT, GST, levies, and duties that foreign and domestic consultants may have to pay and then be reimbursed for by the executing agency.

(d) **Total Estimate:**

The sum of Remuneration cost, Reimbursables cost and Taxes gives the estimate for the Consultancy Services.

### 4.3 Bidding Process

Bidding (or, Competitive bidding) is a procurement method that involves inviting multiple vendors or service providers to submit bids (or offers) for any subject matter of procurement i.e., goods, work or service. Competitive bidding allows transparency, equality of opportunity and the ability to demonstrate that the outcomes represent the best value. Hence, competitive bidding process is preferred in public procurement.

The main objective of a bidding process is to select, award and sign a contract with the most preferred bidder whose bid (i.e., proposal or offer) best meets the objectives of procurement and provides the best deal for the procuring entity.

In a typical bidding process, the detailed specification of the item required is normally prepared by the indenting officials or the user department with the help of technical experts, wherever required. Other terms and conditions are normally taken from the Standard Bidding Documents, guidelines or orders issued by the Finance Department from time to time in conformity with the Act & Rules. The tender terms and conditions may be customised as per the subject matter of procurement, wherever required, to align it with the industry norm and market dynamics subject to the provisions of the Act and Rules. In case of open competitive bidding the issue of tender inviting bid is advertised appropriately to get adequate response. In response to the notice inviting bid/proposal, the interested eligible bidders prepare and submit their detailed bids/proposals containing both financial and technical details in the manner prescribed. The bids are evaluated by the Tender Evaluation Committee duly appointed by the procuring entity as per the evaluation criteria as set out in the bidding documents to select the most preferred bidder for award of the contract. The term “Bidding” and “Tendering” are used interchangeably and connotes the same meaning.

Open Competitive Bidding is the most

- Availability of enough eligible bidders acting independently
- Absence of any cartel or grouping,
- Information is shared equally among all prospective bidders.
- Well defined requirement with adequate clarity
- Procurement in bulk quantity by aggregating the requirements

Once the competitive price is discovered by any procuring entity the next important step is price justification. The procuring entity must ensure the reasonableness of the price irrespective of the process or method followed before award of the contract or issue of letter of award. The estimated cost plays a vital role in price justification. If there is a difference between the discovered price and the estimated price even after due adjustment for all such factors, if any, which have not been considered at the time of estimation then that may not result in a successful bidding process. In cases, where the procuring entity fails to establish the reasonableness of the price discovered, may go for a fresh tender making necessary corrections in the tender document, if required and take all such measures to increase participation.



Bidding is also useful for discovering new suppliers. For this purpose, a Request for Expression of Interest (REOI) document is prepared and is advertised widely. Suppliers who are interested in supplying the item or service, submit their Expression of Interest, enclosing details of the item/work made by them, or service rendered by them, their technical and recommended method for a financial capability, experience, and other competitive price by any procuring entity by ensuring competition. This is also considered to be the most efficient method of price discovery even when the procuring entity has a lesser product knowledge. The success of a bidding process depends on following pre-requisites information. The EOIs received are evaluated, and from them the list of potential bidders is prepared.

REOI is also helpful for the procuring entity to gather additional information on the subject matter of procurement to fine tune the requirement both in technical and commercial terms. REOI may be followed up with an appropriate bidding process.

#### 4.4 Advantages of Bidding Process

Procurement through a competitive bidding process is most preferred method in case of public procurement. Some of the advantages of this method of procurement are as follows.

- **Due diligence:** bidding provides the best possible value-for-money outcome from the procurement activity.
- **Compliance and regulatory requirements:** It is the recommended method for public procurement, it ensures that opportunity has been given to all equally to participate,
- **Better value:** in the form of price reductions, better service, higher quality products or other value additions.
- Uncovers other alternatives and options available in the marketplace
- Audit trail of the entire process which can be shown, if challenged.
- **Competition:** a competitive environment is created, where bidders compete for this business.

#### 4.5 Disadvantages of Bidding

Some of the disadvantages of procurement through a bidding process is:

- Lengthy time frame for completion of the procurement process.
- Requires strict adherence to policies procedures.
- Technical specifications may restrict suppliers' participation.
- Limits the possibility of building long-term relationships with suppliers.
- Tendency to use cheaper, inferior quality materials and/or labour for price competition.
- Compromise on quality and safety norms with a quest to be price competitive.

#### 4.6 Content of Bid

As per the Act, a "bid" means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal (technical or financial) or quotation. A bid is an offer made by an interested party to supply goods/services or to execute a work, in response and according to a Bid Invitation. In legal terms, i.e., according to the Indian Contract Act, it is a proposal made by the second party (Seller) in response to a bid invitation of the First party (Buyer). If the first party (Procuring Entity) accepts the bid (without modification), an agreement is formed between them.

Bidder shall be a natural person, private entity, government-owned entity or, any combination of these having a formal intent and legal competency to enter into an agreement or contract and are registered under respective Act and having Jurisdiction in India or any other country with which India has not banned trade relations.

Normally a bid or a proposal is submitted in two parts i.e., Technical & Financial. The technical bid contains information related to the techno-commercial matters and the financial bid contain information relation to price.

#### **A. Technical Bid**

This is the part of the bid which contains documents that will prove that the bid fulfils the technical and commercial requirements of the tender including eligibility and qualification criteria. In the case of a services, the technical proposal may also contain the approach and methodology to be followed in rendering the service and suitability of manpower/ personnel to be deputed.

A Technical Bid contains both, technical as well as commercial information of the bidder (supplier/ Service Provider/Consultant/contractor) as well as the subject matter of procurement. The documents and information to be furnished by the bidder along with the technical bid are specified in the bidding documents. The content of the technical bid shall be largely dependent on the nature, value and complexities of the subject matter under procurement, method of procurement and system of bidding (one/two cover, single/stage, etc.).

The content of a typical technical bid shall be as follows:

- 1) bid submission form or cover letter
- 2) bid security (in a separate envelope)
- 3) Processing fee
- 4) certificate of incorporation/registration
- 5) manufacturing license
- 6) Registration details with GST & Income Tax Authority
- 7) MSE declaration & certificate(s)
- 8) Joint Venture declaration (if required)
- 9) Declaration/Affidavit with respect to acceptance of all tender terms and conditions.
- 10) proof of registration or empanelment, if required
- 11) manufacturer's Authorisation Letter to bid, if required
- 12) authorisation of the person signing the bid on behalf of the bidder
- 13) documents to show that the bidder meets the eligibility criteria:
- 14) country of origin declaration satisfying Make in India requirements
- 15) technical specifications of the offered item
- 16) performance specifications (if applicable)
- 17) drawings (if applicable)
- 18) specifications & brochures
- 19) testing and quality control facilities

- 20) declarations of
- having paid all taxes
  - not being insolvent or bankrupt
  - directors/officers not convicted of any criminal offence in 3 Yrs
  - not having any conflict of interest
  - not blacklisted or debarred for participation in any bidding process by any government or semi-government institution and which is time being in force.
- 21) documents to show that the bidder meets the qualification criteria:
- proof of technical capacity
  - proof of production capacity
  - proof of quality control capacity
  - list of essential equipment
  - list of essential manpower
  - Financial statements (Balance sheets & Profit & Loss statements for past three years)
  - Proof of experience in similar activity/business

#### **B. Financial Bid**

A Financial Bid contains price and other financial information like taxes, duties, agency commission, discounts etc. Usually, there is a prescribed format for submitting this part of the bid. The financial bid may contain information like:

- 1) brief description of the item
- 2) price per unit
- 3) quantity offered
- 4) GST (and/or any other taxes/duties)
- 5) packing and forwarding charges, freight and insurance, if quoted separately
- 6) Maintenance Cost, if asked for
- 7) Cost of consumables & spares, if required
- 8) total value of the bid
- 9) in case of imports, depending upon INCOTERMS used, it may contain e.g., CIF/CIP/DDP price, currency, cost of local services like installation, commissioning, and training etc.

A Technical or Financial bid is complete, if it contains all the technical, commercial, and financial information as required in the bid invitation document. Incomplete bids are likely to be rejected at the time of initial scrutiny itself.

#### **4.7 Types of Bidding**

- A) Single Stage bidding: In a single-stage bidding, bidders are asked to submit their bids in one stage only. The Technical and Financial bids are to be submitted at the same time.
- B) Two Stage Bidding: In a two-stage bidding, bidders are asked to submit their bids in two stages. In the first stage, only the Technical (techno- commercial) bids are called, which are opened

and evaluated. A list of bidders is prepared whose technical bids have been found to meet the requirements. Discussions with the bidders on technical and/or commercial conditions may be held at this stage with equal opportunity given to all bidders to participate in the discussions or make presentations.

- C) Single Envelop Bidding System: In a single envelop (also called single cover) bidding system, bidders are asked to submit the Technical bid and Financial bid in a single sealed envelope/cover.
- D) Two Cover Bidding System: In a two- envelope bidding System, bidders are asked to seal their Technical and Financial bids in separate

In the second stage, the technical specifications and commercial conditions are revised (where necessary), and Technical and Financial bids are called only from covers/envelopes, and then to seal both the envelopes in a third outer envelope. The envelope containing the technical bid/proposal is marked "TECHNICAL BID/PROPOSAL for

Tender No ... Due on dd/mm/yyyy", while the envelope containing the Financial Bid is marked "FINANCIAL BID for Tender No ... due on dd/mm/yyyy" so that their contents can be distinguished easily and there is no mistake made while opening them. However, in case of online bidding through procurement portal, both financial and technical bid submitted separately by uploading them in softcopies in the prescribed format (i.e. ".pdf" or ".xls".)

The Technical bid is opened first and evaluated, and the financial bids of only those bidders who have been found technically acceptable are opened and evaluated.

#### 4.8 Single Stage Single Envelop Bidding Procedure

This is the most commonly used bidding procedure for procurement when the subject matter of procurement is of low value and simple in nature without much technicality. This procedure is quick and simple. It is used when

- the technical specifications of the bidders who during subject matter of procurement (i.e., evaluation of their first stage bids. goods/works/service) are not complex.
- the subject matter of procurement and their quality standards are well defined and clearly set, and
- the value of procurement is not too high.

In this procedure, the Technical and Financial bids are called simultaneously, in a single stage and in a single envelope. Bidders are asked to seal their technical bid and Financial bid together in a single envelope. At the time of tender opening, the single envelope is opened, and both the Technical and Financial bids get opened simultaneously for evaluation.

The Contract is awarded to the bidder whose bid is:

- the lowest priced bid,
- responsive
- meeting eligibility criteria,
- meeting technical requirements,
- meeting commercial requirements

*(Ref: Act Sec 13 & Rules Sec 14)*

#### 4.9 Single Stage Two Envelope Bidding Procedure

This is most used procedure is used when

- the technical specifications and requirements are complex,
- the quality standards are not clearly set, and
- the value of procurement is not too low.

In this procedure, the technical bids and the financial bids are called simultaneously, in a single stage and in two separate envelopes. The Technical (or techno-commercial) bid is sealed in a separate envelope, and the financial bid is sealed in a second envelope. Both the envelopes are duly marked (as in para 4.6.4) and sealed in a third outer envelope. Bid Security and processing fee (if any) is submitted along with the Technical Bid.

On the designated date, time & place of tender opening, the technical bids are opened first, while the financial bids are kept sealed, inaccessible to the Bid Evaluation Committee.

Technical bids are evaluated by the Bid Evaluation Committee, as per the technical and commercial criteria given in the bid document. After the evaluation is completed, and approval taken from the Competent Authority, a list of bidders that meet the requirements set for the technical Bid is prepared. All the bidders are intimated about the outcome.

Financial bids of only those bidders that meet the requirements set for the technical Bid are opened on a pre- announced date, time, and place, in the presence of the bidders or their representatives. The Financial bids are then sorted in order of increasing total cost, evaluated, and a recommendation for award of contract to the most preferred bidder is made by the evaluation committee after price justification to the Competent Authority.

If none of the bidders meets the techno-commercial criteria, the bidding process is cancelled, and fresh bids are invited, without opening the financial bids. Once bids are opened, the evaluation criteria are never relaxed, because the action may be unfair to bidders who never quoted because of the (tough) criteria.

The contract is awarded to the bidder whose bid is found to most advantageous as per the financial evaluation among the technically qualified/accepted bids.

The financial bids of bidders whose technical bids were found to be unsuitable on techno-commercial criteria are returned unopened to them. (*Ref: Act Sec 13 & Rules Sec 14*)

#### 4.10 Two Stage Bidding

This procedure is used when:

- the technical/user department has a rough idea of what is required but does not have a complete idea of the technical specifications of the item,
- what items/solutions are available in the market is not known,
- likely sources are not known.
- It is not feasible for the user department to frame specifications for the item, without receiving technical inputs from the bidders.
- the specifications of the item may also be changing rapidly in the market.
- The bidder is expected to carry out a detailed survey or investigation, risk assessment, and costs associated with the procurement.

This is normally used only for high value procurement cases of the above type.

**(A) First Stage:** In the first stage, the procuring entity invites bids giving the broad objectives of procurement, technical requirements, quantity required, commercial terms and conditions and eligibility criteria for bidders. Eligibility criteria may require bidders to give proof of their technical capability, experience, financial capability, etc. Bidders are required to submit a bid security at this stage. Price information is not called for from the bidders at this stage.

The first stage bids are evaluated by a Bid Evaluation Committee, and a shortlist is prepared. Shortlisting criteria to be used is strictly as per the criteria given in the bidding document. Each bid is allotted a score based on the marks for each parameter and the weightage given to it. The total score is calculated for each bid, which is a sum of marks for each parameter. All bidders who score above a minimum score are shortlisted. The shortlist should comprise not less than three bidders. A fail/pass criteria can also be used for shortlisting.

Discussions are held with the bidders, in a transparent manner with equal opportunity given to all bidders to participate in the discussions or make presentations on technical aspects, commercial conditions and evaluation criteria may include other stakeholders or any persons who can add value on various technical aspects and criteria including the evaluation criteria.

Based on these discussions, the technical specifications, quality benchmarks, warranty, environmental friendliness, maintenance, delivery conditions, evaluation criteria, etc may be revised, without altering the fundamental nature of the procurement itself.

**(B) Second Stage:** In the second stage, final bids are invited from the bidders shortlisted after the first stage for the revised technical and commercial specifications and evaluation criteria. The final bid contains the bid price and detailed technical bid in response to the revised technical specifications, and other terms and conditions.

Any shortlisted bidder, who is unable to supply due to the revised specifications, can withdraw from the bidding process at this stage, by giving adequate reasons, without being penalised or losing Bid Security, provided the bidder declares its intention to withdraw in writing with reasons thereof at least one working day prior to the date fixed for submission of the final bid with bid price.

If, after the first stage of bidding, the procuring entity is convinced that

- there is a likelihood of more bidders participating,
- there is a likelihood of getting trapped in legacy technology,

and such a criterion has been specified in the first stage bidding, the procuring entity may opt for adopting the Open Competitive Bidding procedure with the revised technical and commercial conditions and evaluation criteria.

Except for the deviations mentioned in the preceding paragraphs, the procedure of Open Competitive Bidding applies to the Two Stage Bidding procedure. (*Ref: Act Sec 32 & Rules Sec 24 D*)



## Methods of Procurement

### 1. Methods of Procurement

#### 1.1. Relevant Provisions under APP Act & Rules.

Sec 28 of the APP Act, 2017 and Rule 24 of the APP Rules, 2020 specify different procurement methods and procedures to be followed by a procuring entity for procurement of Goods, Services or Works. However, the choice of procurement methods by the procuring entity for a subject matter of procurement is dependent on different factors including nature and complexity, availability, circumstances (emergency), value of procurement, etc.

#### 1.2. Methods for Procurement

Open Competitive Bidding method is the most recommended method to be followed by the procuring entity for competitive price discover through completion by giving equal opportunity to all intending and eligible bidders. But in certain specific circumstances, depending on the nature, value, availability, purpose of the subject matter of procurement, other methods as prescribed below may be more appropriate to achieve the key procurement objectives like; economy, efficiency and timeliness.

S. No	Method of Procurement	Brief Description	Subject Matter of Procurement
1	Open Competitive Bidding	Most preferred method of discovering a competitive price, where equal opportunity is given to all prospective eligible bidders to participate.	Goods, Services (non-consulting) & Works
2	Limited Bidding	This is less time consuming and inexpensive method. Primarily preferred when the subject matter of procurement is available with selected parties or when there is an urgency.	Goods, Services & Works
3	Single Source Procurement	The subject matter of procurement is sourced from a single source/party in certain specific circumstances.	Goods, Services & Works
4	Two Stage Bidding	It's a method of bidding where bids are invited in two stages. Normally, shortlisting is done in Stage-I and final selection is done in Stage-II.	Goods, Services & Works
5	Electronic Reverse Auction	This is a new method of procurement not very commonly used in public procurement. Its usefulness is expected to increase in future.	Goods
6	Request for Quotation	This method is traditionally used for procurement of items of lesser value (less than Rs 1.00 Lakh in an occasion and total of Rs 5.00 lakh in a year). This method is normally recommended for low value goods which are readily available off-the-shelf items.	Goods, Services & Works
7	Spot Purchase	Adopted under similar circumstances that of Request for Quotation but instead of inviting quotation the purchase committee certifies the quality, specification and price reasonableness.	Goods

<sup>1</sup> This Module-5A covers all procurement methods as defined under Sec 28 except Swiss Challenge. Swiss Challenge Method and Non-consulting Services are dealt separately under Module-5B. Similarly, the process of procurement of Consulting services is dealt separately in the Module-12

S. No	Method of Procurement	Brief Description	Subject Matter of Procurement
8	Competitive Negotiations	This is also a new method of procurement used in case of urgency or where the subject matter of procurement include livestock, oil seeds, cotton or other agricultural produce whose price fluctuate frequently. The purchase committee has to certify the quality, specification and price reasonableness.	Goods
9	Rate Contract	A commonly used method where the subject matters of procurement are required frequently by the procuring entity over a period of time. It's a contract for price without commitment for any quantity of time of supply.	Goods, Works & Services
10	Government e-Marketplace (GeM)	Government e-Marketplace (GeM) is a one stop portal to <b>facilitate online procurement of common use Goods &amp; Services required by various Procuring entities</b> . GeM aims to enhance transparency, efficiency and speed in public procurement.	Goods & Services as available
11	Framework Agreement	This method is adopted when the procuring entity requires the subject matter of procurement over a period of time but for which the quantity, extent and timing can't be specified in advance.	Goods, Services & Works
12	E-Commerce	Procurement through e-commerce website where the subject matter of procurement not available in GeM. The purchase committee has to certify the quality, specification and price reasonableness.	Mostly Goods
13	Community Procurement (for community driven scheme)	This method of procurement enables the beneficiary to procure the schematic input of their own choice by themselves.	Equipment, machinery, etc.,
14	Swiss Challenge	This is a method of procurement in which an unsolicited proposal for creation of a public asset or provisioning of a services are received from the proponent and third parties are allowed to challenge the original proposal through open bidding, and then the original proponent is given a chance to counter match the most advantageous competitive offer.	Public Assets or Services
15	Construction Committee	Where the construction work under MP- LADS/ MLA-LADS/Schemes under United Funds of small value ( i.e. up to Rs 50.00 Lakhs) are assigned to a duly constituted construction committee, by the District Officials.	Civil Construction under specified scheme.

## 2. Method of Evaluation & Selection

- 2.1 The method of evaluation and selection of proposals (or Bids) for consulting service is different from other subject matter of procurement (e.g., Goods, Works & Non-consulting Services). In case of Goods, Works or Non-consulting Services, the bidder offering the best financial quote among all technically qualified bidders (i.e., those who fulfils all technical and eligibility criteria) is selected as the preferred bidder for award of the contract. But in case of consulting service different methods are followed other than Least Cost System where factors other than cost (i.e. quality, Budget and qualification) are also considered for selection of the most preferred consultant.
- 2.2 The prescribed methods for evaluation and selection for consulting services and other subject matter of procurement are given below:

S. No	Method of Evaluation & Selection	Consulting Service	Goods, Works & Non-consulting Service
1	Quality and Cost Based Selection (QCBS)	Yes	Specific Cases <sup>2</sup>
2	Least Cost System (LCS)	Yes	Yes
3	Quality Based Selection (QBS)	Yes	
4	Fixed Budget System (FBS)	Yes	
5	Consultants Qualifications Selection (CQS)	Yes	
6	Single Source Selection (SSS)	Yes	Yes

## 3. Selection of Procurement Method.

- 3.1 Selection of appropriate procurement method for a subject matter of procurement is key to the success of the procurement efforts. An inappropriate method may not yield an expected outcome rendering the entire process a futile exercise.
- 3.2 The basis approaches to be followed for selection of an appropriate procurement method are delineated as below:
- 3.2.1 As per Section 29 of the APP Act 2017 and Rule 24 of the APP Rules 2020, Open competitive bidding shall be the most preferred method of procurement to be followed and in case any procuring entity choses a method of procurement other than the Open competitive bidding, it shall record the reasons and the circumstances for the same in the case file and clearly noted inthe Procurement Register indicating the name and designation of the Procuring Authority making such decision.
- 3.2.2 Other probable market approaches could be to process procurement through Limited Bidding and Single Source Selection method.
- 3.2.3 The nature, value and technical complexity of the subject matter of procurement has also bearing in the selection of appropriate procurement method. Less time consuming and process oriented methods should be preferred for procurement of small value, whereas in case of high value complex subject matter of procurement an open competitive method is considered to be appropriate.
- 3.2.4 Competition, economy and price reasonableness are the fundamentals of public procurement and should be considered concurrently so far selection of procurement method is concerned.

*(Example: A procuring Entity intends to procure one laptop computer costing Rs 60,000/- . In this*

<sup>2</sup> In case of works (classified as Quality Oriented Procurement) and Non-consulting Service of value less than Rs 10.00 Crores QCBS method is recommended (Refer Order No F.1/1/2021-PPD, Dated 29<sup>th</sup> October, 2021 by Ministry of Finance, Department of Expenditure, Procurement Policy Division, Govt of India

case Request for Quotation Method should be the preferred method than Open Competitive Bidding Method. Imagine a situation where the procuring entity has to buy 200 numbers of laptop computers procurement value amounting to Rs 1.2 Crs then Open Competitive Bidding Method or GeM should be preferred )

3.2.5 It may be noted that for a specific subject matter of procurement, more than one method would be available to the procuring entity. However, the procuring entity needs to analyse various aspects of the given situation and come to a conclusion to select a particular method of procurement recording reasons in writing.

## 4. Key Features of Different Methods of Procurement

### 4.1 Open Competitive Bidding: (Rule 24 (A) of the APP Rules, 2020)

- 4.1.1 There shall be no restriction on participation of eligible bidders in Open Competitive Bidding. This shall include eligible bidders not registered with the procuring entity as well as foreign bidders bidding in Indian rupees. If bidders are required to be pre-qualified, the procedure for pre-qualification of bidders prescribed under the Rules shall be followed.
- 4.1.2 The date for opening of bids shall be fixed after at least 21 (twenty-one) clear days counted from the date of publication of the latest advertisement inviting bids. The invitation to bid shall be published in the State Public Procurement Portal and in at least one other manner as may be prescribed.
- 4.1.3 Open Competitive Bidding at global level, i.e., International Competitive Bidding, (ICB), with provisions to bid in the currencies under the notified Basket of Currencies of the Reserve Bank of India, shall be resorted to in cases where:
- The required specifications, quality of the subject matter are not available within the country, or the alternatives available within the country are not suitable for the purpose;
  - There is requirement for compliance to specific international standards in technical specifications and sufficient number of competent domestic bidders that are likely to comply with these required technical specifications and quality are not available;
  - There is a suspected anti-competitive behaviour attracting provisions of Competition Act, 2002 (Central Act 12 of 2003) as amended, among indigenous bidders;
  - Any other reason for which International Competitive Bidding is considered to be appropriate by the procuring entity or the concerned Administrative Department:
  - Provided that date for opening of bids shall be fixed after at least 45 (forty-five) clear days counted from the date of publication of the latest advertisement inviting bids.

#### Examples:

S. No	Details of the Subject Matter of Procurement	Method of Procurement	Remarks
1	Department of Health & Family Welfare wants to construct a new medical college building of an estimated value of Rs 120.00 Crores through an experience civil contractor. (WORKS)	Open Competitive Bidding	It shall be a National Competitive Bidding (NCB) as there are many potential players in the domestic market

S. No	Details of the Subject Matter of Procurement	Method of Procurement	Remarks
2	Department of Elementary Education intends to procure around 500 tables to be provides to the principals of all elementary schools in the State. The tablets also need to have certain pre-installed software for this purpose. The estimated values of the procurement along with the software is estimated to be Rs 35.00 Lakhs. (GOODS)	Open Competitive Bidding through GeM	Since required product is available in the GeM portal.
3	Director General of Fire wants to procure 200 numbers of 40 meter Turn Table Ladders (TTL) to be fitted on top of fire tender cum rescue vehicles for better public service delivery. The department has found that there are very few Indian manufacturers of TTL.	Open Comparative Bidding Method	International Competitive Bidding (ICB) shall be preferred due to lack of domestic players

#### 4.2 Limited Bidding (Rule 24 (B) of the APP Rules, 2020)

4.2.1 A procuring entity may choose to adopt the Limited Bidding Method for a particular procurement on satisfaction of any of the conditions prescribed in sub-section (1) of section 30 or section 6 of the Act and after recording the specific reasons and circumstances.

4.2.2 Sub-section (1) of Section 30 of the Act stipulates the following:

- a) Subject matter of procurement can be supplied only by limited number of bidders; or
- b) The time and cost involved to examine and evaluate large number of bids may not be commensurate with the value of the subject matter of procurement; or
- c) Owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the matter of procurement cannot usefully be obtained by adopting the method of open competitive bidding; or
- d) Procurement from a category of prospective bidders is necessary in terms of Sub-section (2) of Section 6 of the Act (para 4.2.3 below refers)

4.2.3 Section 6 of the APP Act, 2017 stipulates the following:

- a) Procuring entity may not stipulate any of the requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorised or required to do so by the Act or the Rules or Guidelines made by the provisions of any other Law for the time being in force;
- b) In addition, and without prejudice to any existing provisions of the enactment of notification of Procurement Preference Policy, Assam, 20153, the State Government may, by notification in this behalf, provide for mandatory procurement of any subject matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds, namely:
  - (i) Promotion of domestic industry;
  - (ii) Socio-economic policy of the Central or the State Government;
  - (iii) Any other consideration in public interest in furtherance of a duly notified policy of the Central or the State Government; provided that any such notification shall contain a reasoned justification for such mandatory or

preferential procurement, the category of suppliers chosen and the nature of preference provided.

- 4.2.4 In such Limited Biddings, the restriction or the limitation criteria shall be in respect of the bidders or the number or type or category of bidders as provided for in section 6 of the Act and not in any other respect. The selection of bidders for the purpose shall be done by the procuring entity with due diligence in a fair and transparent manner.
- 4.2.5 The particular limitations of the bidders as decided by the Procuring Entity, for the limited bidding method chosen by it, shall be clearly specified in the Notice Inviting Bids which shall be, in addition to writing directly as provided for in sub-section (2) of section 30 of the Act, simultaneously published in the State Public Procurement Portal.
- 4.2.6 All bidders fulfilling the qualification and limitation criteria shall be allowed to participate in the bidding process irrespective of whether any invitation was issued to them or not as provided for, in clause (b) of sub-section (2) of section 30.
- 4.2.7 Provided that the procuring entity may not exhibit the invitation to bid on the State Public Procurement Portal if the subject matter for procurement is of the nature for protection of national security interests to maintain confidentiality, like printing of examination papers as specified in clause (e), or clause (h) of sub-section (1) of section 31 of the Act.
- 4.2.8 Subject to section 30 of the Act and except as otherwise provided for at 4.2.7 above, the procedure prescribed for procurement by Open Competitive Bidding, including evaluation thereof, shall, mutatis mutandis, apply to all procurement made by the limited bidding method.

#### Examples of situations where limited bidding method is preferred:

- (i) Emergency work for the restoration of a 50 metre road which got washed away by the river, cutting off over 400 villages – challenges involved are paucity of time due to emergency situation and requirement for quick evacuation and restoration of road. *In this situation an “Open Competitive Bidding” method may not be the preferred. A “Limited Competitive Bidding” method shall be the appropriate method.*
- (ii) Director General Fire wants to procure **10 (ten)** number of 40 meter Turn Table Ladders (TTL) to be fitted on top of fire tender cum rescue vehicles for better public service delivery. The department has found that there are only **three** Indian manufacturers of TTL. *In this situation ICB may not be the preferred method considering the quantity and value of procurement although there are few domestic suppliers. However, a Limited Bidding method shall be most appropriate.*
- (iii) Department of Health and Family Welfare wants to procure some drugs for cancer treatment for which are available with only few suppliers. *In this case Limited Competitive bidding shall be the appropriate method as Open Competitive Bidding may not yield any better results.*
- (iv) Government of Assam has reserved a list of medical consumables to be procured exclusively from local small Scale Industries under Procurement Preference Policy. The Limited Bidding method shall be followed for procurement of items under this reserve list by inviting bids only from the Local Small Scale Industries.

#### 4.3 Single Source Procurement (Rule 24 (C) of the APP Rules 2020)

- 4.3.1 The procedure to be followed for single source procurement, when chosen by competent procurement entities, after recording reasons thereof, in the cases specified in sub-section (1) of section 31 of the Act which are briefly as under:

<sup>3</sup> New preference policy i.e., Assam Procurement Preference Policy 2021 has been enacted and made applicable w.e.f. 29<sup>th</sup> January 2022.



- a) Subject matter of procurement is available only from one particular bidder and no reasonable alternative or substitute source exists;
  - b) In cases of unforeseen and extreme urgencies and engaging in any other method would be impractical;
  - c) Additional supplies or services must be procured from the same supplier for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology or service;
  - d) Additional requirement to be sourced against an existing contract in cases where procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provision for such extension exist in the original contract;
  - e) Procuring entity determines that use of any other method of procurement is not appropriate for the protection of national security interests;
  - f) Procurement from particular Bidder is necessary in terms of Sub-section (2) of Section 6 of the Act which refers to the preferential procurement under various conditions;
  - g) Subject matter of procurement is of artistic nature;
  - h) Subject matter of procurement requires confidentiality like printing of examination papers;
  - i) Procurement of particular breed of live-stock or seeds or seedlings available only in one source or when the required quantity is not available with single source but available at different sources.
- 4.3.2 The procedure to be followed shall be as follows :-
- a) The procuring entity shall solicit a bid from the single prospective bidder and shall also exhibit the invitation to bid on the State Public Procurement Portal simultaneously;
  - b) Provided that the procuring entity may not exhibit the invitation to bid on the State Public Procurement Portal, if the subject matter for procurement is of nature specified in clause
  - c) (e) or clause (h) of sub-section (1) of section 31 of the Act as also mentioned above in 4.3.1.
- 4.3.3 The single source may be selected from the list of empanelled, registered bidders for the subject matter of procurement with the procuring entity or, where it does not register bidders, from the list of empanelled, registered bidders of another procuring entity in terms of sub-section (5) of section 19 or a suitable bidder identified in an objective manner through other reliable sources.
- 4.3.4 The basis or grounds for the selection of the single bidder shall be recorded in writing by the Procuring Entity.
- 4.3.5 In procurement of goods, where items are procured only from Original Equipment Manufacturers or manufacturers having proprietary rights or their authorised dealers or stockists, a Proprietary Article Certificate (PAC) shall be signed by the appropriate authority. The concerned Administrative Department responsible for the sector of such proprietary shall lay down the schedule of powers for signing such certificate.
- 4.3.6 The procuring entity may engage in negotiations in good faith with the single bidder for obtaining a more advantageous deal only after submission of bid.
- 4.3.7 Except as otherwise provided for in this rule and provisions relating to pre-qualification proceedings, publication of Notice Inviting Bids in newspapers, price and sale of bidding documents, pre-bid clarifications, exclusion of bids, comparison of rates of firms from outside and within Assam, all other provisions relating to

the procedure for Open Competitive Bidding shall, mutatis mutandis, apply to all procurement made by the single source procurement method.

- 4.3.8 Notwithstanding anything contained herein above in these clauses in emergent situations arising in a district of the State out of floods and other calamities, natural or otherwise, or urgency for upholding human rights, the relevant subject matter may be procured from a single source at or below the ceiling rates to be fixed by a District Emergency Procurement Committee. The District Emergency Procurement Committee shall decide the ceiling rates for the subject matter of procurement on the basis of analysis of the wholesale market or authorised dealer rates of that subject matter prevailing during the previous six months. The constitution of committee shall be as follows:-
- a) Deputy Commissioner – Chairperson
  - b) District Officer of the Concerned Department – Member Secretary
  - c) Sub-divisional Officers of Civil Sub-division – Members
  - d) Finance and Accounts Officer – Member
  - e) Concerned Technical Officer – Member.
- 4.3.9 An Annual report of all procurements made by the method of single source procurement shall be submitted, in writing, to the State Procurement Facilitation Cell through the concerned Administrative Department by the first quarter of the following financial year.
- 4.3.10 All procuring entities shall make continued efforts to break the monopoly of bidders by modifying requirements, specifications, terms and conditions, increasing the number of registered bidders, etc. to enable more bidders to participate.

**Examples:**

- (i) Emergency work for the restoration of a 50 metre road which got washed away by the river, cutting off over 400 villages and the connectivity has to be restored immediately to ensure supply of essential items including food, medicine and there support service.
- (ii) A Government Department wants to procure 1 lakh 'Foldscopes' - an innovative optical microscope that can be assembled from simple components for popularization of science across middle elementary schools of the State. 'The Foldscope' was developed and patented by 'Prakash Labs' in USA which is the sole manufacturer of the instrument. Each Foldscope costs less than Rs.500/- which is substantially lower than conventional compound microscope which costs Rs.3500/- per unit.
- (iii) Under an existing contract, a software developer (Agency) selected through an open bidding process, is implementing an office automation software in a directorate. The need for another automation module was assessed subsequently which is not in the original scope of work. In such case the additional work should also be awarded to the existing Agency as this would be technically feasible and financially beneficial to the procuring entity.

**4.4 Two Stage Bidding (Rule 24 (D) of the APP Rules 2020)**

- 4.4.1 Section 32 of the APP Act, 2017 prescribe use of Two Stage Bidding in the following circumstances:
- a) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving regarding its technical aspects from bidders; or
  - b) The character of the subject matter of procurement is subject to rapid technological advances and market fluctuations to make Open Competitive Bidding un feasible; or

- c) The procuring entity seeks to enter in to a contract for purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development cost; or
  - d) 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.
- 4.4.2 In the first stage of the bidding process, the basic objective is to qualify prospective bidders and to understand technical aspects of latest offerings of the market. The procuring entity shall invite proposals containing the technical aspects including design, technology etc. relevant to the procurement and terms and conditions of contract as well as the professional and technical competencies and qualifications of bidders relating to the subject matter of procurement without asking for any bid price. The bid document for the first stage shall, inter-alia, include a brief description of objectives and scope of the requirement, instructions to bidders including eligibility criteria, evaluation criteria, preliminary qualification criteria relating to past experience, technical capabilities, financial strength etc. which shall be used for short listing prospective bidders. Each parameter may be assigned marks and relative weights. Alternatively, instead of scoring and assessing against weights, the bid document may specify a 'fail-pass criteria' with the minimum qualifying requirement for each of the criteria, such as minimum years of relevant experience, minimum number of assignments executed and minimum turnover, etc.
- 4.4.3 All first stage bids shall be evaluated for short listing by the Bid Evaluation Committee against the different criteria specifically provided for in the bidding document. The short list shall comprise of not less than three bidders.
- 4.4.4 The Bid Evaluation Committee may hold discussions with the bidders giving equal opportunity to all bidders to participate in the discussions or make presentations. The procuring entity may involve other stakeholders or persons having relevant expertise in the discussions who could add value to decision making on the various technical aspects and criteria including the evaluation criteria.
- 4.4.5 Based on the discussions or presentations so held, one or more acceptable technical solutions shall be decided in respect of detailed technical specifications for each acceptable technical solution, quality bench marks, warranty requirements, delivery milestones, qualification criteria, environment friendliness and suitability, ease of maintenance, sustainability, etc. in a manner that is consistent with the Act and the objectives of transparent public procurement for revision of the original bidding document and specifications etc., as may be necessary.
- 4.4.6 While revising the technical design, stipulations, terms and conditions, or criteria for evaluation, etc. made in terms of the provisions contained in clause (d) of subsection (2) of section 32 of the Act, the procuring entity shall not modify the fundamental nature of the procurement itself but may add, amend or delete any specification of the subject matter of procurement or terms and conditions or criterion for evaluation, etc. Such revision shall be sent to all the eligible bidders and put on the State Public Procurement Portal inviting final bids containing bid prices and detailed technical bid. Standard two envelope bidding procedure is to be followed.
- 4.4.7 Any bidder choosing to withdraw from the bid at the second stage in terms of clause (f) of sub- section (2) of section 32, shall declare his intention to withdraw in writing, citing the reasons thereof, to the concerned Procuring Entity at least one working day prior to the date fixed for submission of the final bid with bid price. Such bidder shall not be penalised in any way and his bid security shall not be forfeited. However, the bid security of a bidder withdrawing from the bid but failing to declare his intention to withdraw till the day before the date fixed for submission of final bid with bid price shall stand forfeited.

- 4.4.8 Notwithstanding anything contained in these clauses, if, after the first stage, the procuring entity is of the view that there is likelihood of further participation by many more bidders or there is a likelihood of getting trapped into a legacy technology, the second stage bidding may not be restricted only to the bidders shortlisted at the first stage, subject to the condition that such provision had been specified in the bidding document for the first stage, ab-initio. In such cases of “Non-committal Two Stage Bidding”, the Open Competitive Bidding method shall be adopted at the second stage in the public interest by issuing Notice Inviting Bids citing the revised set of specifications, terms and conditions and evaluation criteria, etc., as prescribed.
- 4.4.9 Except as otherwise provided for in this rule, all other provisions relating to the procedure for procurement by Open Competitive Bidding method shall, mutatis mutandis, apply to Two Stage Bidding method. Just to recall, in two stage bidding (i) financial bids of only those bidders who have qualified in the technical evaluation shall be opened; and (ii) where bids are invited on variable price basis, the responsive bids shall be evaluated, compared and ranked on the basis of the position prevailing on the date of opening of the second stage technical bids.
- 4.4.10 The two stage bidding method may be used for the complex turnkey projects, EPC contracts such as big power plants and goods of complex nature like setting up of big IT infrastructure where the technological changes are very fast.

**Examples:**

- (i) State Tourism Development Corporation wants to hire a suitable agency to develop, procure and implement a IT based solution across all the hotels and restaurants run by it to improve its management and operational efficiency. Two stage bidding allows the procuring entity to gain knowledge from the market during first stage and to improve the technical specifications and the scope prior to issuance of RFB in the second stage.
- (ii) The Directorate of Food and Civil Supplies wants to procure e-POS devices along with networking equipment to be installed at all Fair Price Shops across the state. Two stage bidding would allow the procuring entity to furnish basic requirements of equipment and system in the bidding document and obtain detailed specifications of the equipment and solution from various perspective Bidders. Procuring entity would be in apposition to refine and fine tune for the specifications of the equipment and the system for issuance of RFB in the second stage.
- (iii) Director State Cancer Institute, Guwahati wants to establish an integrated PET MRI setup with advanced technological features (e.g. Time of Flight (ToF) technology) to enhance its diagnostic facilities. There are very few such equipment is installed in India. Its maintenance, performance and operational efficiency are not known to the authority. In such situation a “Two Stage Bidding” is appropriate as it allows the procuring entity to gain knowledge from the market during first stage and to improve the technical specifications and other terms and conditions prior to issuance of RFB in the second stage.

**4.5 Electronic Reverse Auction (Rule 24 (E) of the Rules)**

- 4.5.1 As per Section 33(1) of the APP Act, 2017 lays down following conditions under which Electronic Reverse Auction method may be used advantageously.
- a) If it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement.
- b) If there is a competitive market of the bidders anticipated to be qualified to participate in the electronic reverse auction to ensure an effective competition; and
- c) The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

- 4.5.2 In this method, the procuring entity shall call for bids by causing an invitation for bids to the electronic reverse auction which shall be published in accordance with rule relating to notice inviting bids or, if limited bidding is duly decided, in accordance with the procedure prescribed for Limited Bidding. It can also be used to obtain best financial bid under two stage bidding where two envelope system has been followed. The invitation to bid shall include:-
- a) A detailed description of the subject matter of the procurement with all specifications, the terms and conditions, time deadlines, form of contract, location of delivery and the required qualifications of bidders;
  - b) The criteria and procedures to be used for ascertaining the qualifications of bidders specifying the nature and type of the supporting documentary evidence or other information thereof that must be furnished by bidders as evidence of their qualifications;
  - c) The manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as any transportation, insurance charges, customs duties, taxes, etc.;
  - d) The criteria and procedure for evaluating bids, including any mathematical formula that shall be used in the evaluation during the reverse auction and such criteria shall be based:-
    - (i) either on price, where the procurement contract is to be awarded to the lowest- priced bid;
    - (ii) alternatively, on price and other criteria applicable as specified in the bidding documents, where the procurement contract is to be awarded to the most advantageous bid.
  - e) The deadline by which the bidders must register for the reverse auction, the requirements for registration and the minimum number of bidders required to register for the reverse auction, if the number of bidders registered for the electronic reverse auction is less than the specified minimum number, the procuring entity shall cancel the reverse auction and such cancellation shall be communicated promptly to each registered bidder. Invitation to fresh Electronic Reverse Auction may be reissued thereafter.
  - f) The date and time of the opening of the reverse auction, the requirements for identification of bidders at the opening of the reverse auction and the criteria governing the closing of the reverse auction. The period of time between the date of issue of the invitation to the Electronic Reverse Auction and date fixed for opening of the reverse auction shall not be less than 7 (seven) working days to enable the bidders to prepare for the reverse auction.
  - g) The provisions for verification of any formalities including, where applicable, ascertainment of qualifications or responsiveness of the bidder, which shall be treated as prerequisite for the execution of a written procurement contract;
  - h) Maximum price that the bidder can quote; step value – minimum amount by which competing bidder should reduce its bid in comparison with current L1 shall be indicated, and
  - i) Any other requirement or procedure for the conduct of the reverse auction considered essential by the procuring entity.
- 4.5.3 The procuring entity may decide whether the electronic reverse auction shall be preceded by an examination or evaluation of pre-qualifications of the bidders which,



if so decided, shall be conducted in the same manner as in e-procurement pre-qualification process in Open Competitive Bidding.

- 4.5.4 All bidders shall have an equal and continuous opportunity to present their bids.
- 4.5.5 There shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders.
- 4.5.6 Every bidder shall be provided with sufficient information, instantaneously and on a continuous basis, during the reverse auction for assessing the standing of their individual bids in the reverse auction as it proceeds.
- 4.5.7 here shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided at 4.5.1 and clause 4.5.5 above.
- 4.5.8 he procuring entity shall not disclose the identity of any bidder during the reverse auction.
- 4.5.9 The reverse auction shall be closed in accordance with the criteria specified in the bid documents.
- 4.5.10 The procuring entity shall suspend or cancel the reverse auction in the case of failures in its communication system that put at risk the proper conduct of the reverse auction.
- 4.5.11 he procuring entity may also cancel the procurement process in compliance with the provisions of section 26 the Act with the reasons to be recorded by PE at any time prior to acceptance of successful bid; or after successful Bid is accepted and the Bidder fails to sign the contract; or fails to provide required security deposit with forfeiture of bid security; or the Bidder has been convicted.
- 4.5.12 At the closure of the electronic reverse auction, the lowest priced bid or the most advantageous bid, as the case may be, shall be declared as the successful bid. In procurement by means of a reverse auction that was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the reverse auction the responsiveness of the successful bid and the qualifications of the bidder submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the bidder submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement, the procuring entity may, in such a case, select the bid that was the 'next lowest-priced' or 'next most advantageous bid' at the closure of the reverse auction, if the bid is ascertained to be responsive and the bidder submitting it is ascertained to be qualified.
- 4.5.13 Except as otherwise provided for in this rule, the provisions relating to Open Competitive Bidding in e-procurement mode shall, mutatis mutandis, apply to electronic reverse auctions.

**Examples:**

- (i) Where a procuring entity wants to procure off the shelf items computer chair and tables, office stationery and consumables (folders, paper, etc.), chimerical & reagents for hospitals, etc.

**4.6 Request for Quotations (Rule 24 (F) of the Rules)**

- 4.6.1 As per Section 34 of the Act, a procuring entity may adopt Request for Quotations method for procurement, if the estimated cost of the subject matter of procurement is below the monetary limit as may be prescribed and is readily available commercial off-the-shelf goods or services that are not specially produced to the particular description of the procuring entity or urgently required goods or works or services for maintenance or emergency repairs. The value limit has been fixed at less than Rupees One lakh on one occasion, but it shall not exceed Rupees Five Lakh in a financial year as per Rule 24(F) of the Procurement Rules. However, Finance Department may, by



notification, raise or lower this monetary ceiling values stating reasons thereof.

- 4.6.2 The entity shall select authorised dealers or wholesalers through diligent market enquiry which is of essence in this mode of procurement. Departmental Stores and Shopping Malls may also be included in the market survey. The procedure for requesting for quotations shall be as follows :-
- a) The procuring entity shall initiate and complete the process after diligent enquiries from the market and ascertaining reasonability of price;
  - b) The procuring entity shall keep records of the different dealers, wholesalers, vendors, etc. approached and prices indicated by each of them;
  - c) Sealed quotations shall be requested from as many genuine potential bidders as practicable, subject to a minimum of three setting forth the specific criteria for evaluation and each bidder shall be permitted to give only one quotation;
  - d) Each bidder, from whom a quotation is requested, shall be informed whether any element other than the price for the subject matter of the procurement itself, such as any applicable transportation, insurance charges, customs duties, taxes, etc., are to be included but shown separately in the total quoted price;
  - e) The successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations;
  - f) The quotes from the bidders shall be tabulated and evaluated, and a comparative statement shall be prepared by the Bid Evaluation Committee recommending the successful bidder. Such comparative statement shall be signed by all members of the Bid Evaluation Committee on which the procuring entity shall take a decision regarding acceptance and sanction thereof or otherwise. No quotation shall be accepted or sanctioned by the procuring entity if it is higher than the prevailing wholesale market price or prices of authorised dealers.
- 4.6.3 The procuring entity shall make payments against procurement through the request for quotation method by cheque or through Electronic Clearance Service for the sake of transparency.
- 4.6.4 The controlling as well as the supervising officers and internal auditors of the procuring entity may cross check a randomised sample of such procurements for prices, fake vouchers, etc. to ensure that:-
- a) the same vendor(s) is/are not being patronised repeatedly;
  - b) the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting an approval from the higher authority required for sanctioning the purchase of the original demand; or
  - c) Open Competitive bidding or Limited Bidding is not being avoided.
- 4.6.5 The controlling officer shall conduct annual reviews of such procurements to ensure that future anticipated requirements are clubbed and procured through Limited Bidding or Open Competitive Bidding or through Rate Contracts or Framework Agreements.
- 4.6.6 The procuring entities shall furnish annual returns of all procurement made by them through Request for Quotations to the State Procurement Facilitation Cell through the concerned Administrative Department within the first quarter following the end of each financial year.

**Examples:**

- (i) Work for the restoration of road connectivity which has been disrupted due to a flash flood and affecting rescue and relief activity.

- (ii) Requirement of temporary arrangements/ (wooden planks and bamboo) for ensuring immediate movement.
- (iii) A VVIP is to visit a remote location in the state. An old circuit house exists, but the furniture, hosiery etc. need to be done urgently.
- (iv) Purchase of stationery for Government Departments to meet the requirement of an unplanned activity.

#### 4.7 Spot Purchase (Rule 24 (G) of the Rules)

4.7.1 As per Section 34 of the Act, a procuring entity may adopt the method of spot purchase for procurement if the estimated cost or value of the subject matter of procurement is the same as prescribed for Request for Quotation under Rule 24 (F) as duly notified by the State Government in accordance with the provision thereunder. The value limit has been fixed at less than Rupees One lakh on one occasion, but it shall not exceed Rupees Five Lakh in a financial year as per Rule 24(F) of the Procurement Rules, however, Finance Department may, by notification, raise or lower this monetary ceiling values stating reasons thereof.

4.7.2 Procurement shall be made on the recommendation of the Spot Purchase Committee. The Committee shall survey the market diligently to ascertain the specifications, quality and reasonableness of rate with reference to the wholesale market price, identify the appropriate supplier of the subject matter thereof and shall record the certificate prescribed below signed by all the members. Departmental Stores, Shopping Malls, Authorised Dealers may be included in the market survey and reputed internet shopping portals may also be explored.

“Certified that we, (1) .....(2) .....(3) (names of members), members of the Spot Purchase Committee are jointly and individually satisfied that the subject matter recommended for procurement is of the requisite specifications and quality, priced at the prevailing dealer / wholesale-market rate and the supplier recommended is reliable and competent to supply/provide the subject matter in question.” (strike out what is not applicable).

(Signatures with names, designation and date)

4.7.3 Records of the authorised dealers, vendors, wholesalers approached and the price quoted by them shall be kept.

#### Examples:

- (i) Procurement of ten rechargeable emergency light costing Rs 1,000/- each by the procuring entity for use in the field offices.
- (ii) Procurement of one colour inkjet printer for office use of value Rs 5,600/-
- (iii) Procurement of face mask and hand sanitiser by the procuring entity amounting Rs 3500/- to be used in a upcoming workshop.

#### 4.8 Competitive Negotiations (Rule 24 (H) of the Rules)

4.8.1 Section 35 A of the Act lays down the conditions under which a Procuring Entity may choose to procure a subject matter of procurement by the method of Competitive Negotiations and are given as under:

- a) Urgency due to unforeseen events and the procurement cannot be obtained by adopting Open competitive bidding or any other method;
- b) Procurement involves Live-stock, Cotton, Oilseeds or such other agriculture produce where quality of items to be purchased cannot be uniform, the prices fluctuate frequently and the procurement cannot be obtained by adopting Open competitive bidding or any other method.

- 4.8.2 The public need for procurement of the subject matter in regard to the quality and quantity actually required to be procured through competitive negotiations for meeting the urgent public need is to be worked out to avoid any excess procurement or wastage. This is to be communicated, in writing, by the Procuring Entity to the Purchase Committee duly constituted for the purpose.
- 4.8.3 The Purchase Committee shall undertake a survey and make a fair assessment of the prevailing wholesale market price or producer price independently before undertaking comparative analysis and evaluation of the bids received from the qualified bidders, which should be adequate and not be less than three, selected by it in a non-discriminatory manner, in accordance with clause (b) of sub-section (2) of section 35 A of the Act, in order to ensure lowest or most advantageous bid preceding the competitive negotiations.
- 4.8.4 Purchase committee shall finalise and share the techno-commercial conditions for competitive negotiations with likely suppliers and get these signed. Any requirement, guidelines, documents, clarifications or other information related to the negotiations that is communicated by the Committee shall be subject to section 49 of the Act in regard to confidentiality.
- 4.8.5 Thereafter the Purchase committee shall conduct competitive negotiations on techno- commercial aspects, excluding price. An equal opportunity shall be given to all bidders to participate in the negotiations. After holding the techno-commercial discussions, the negotiating committee shall draw up proceedings indicating the techno-commercial agreements reached, excluding the price, and get it signed by all the members of the negotiating committee including the consenting supplier(s) present at the meeting.
- 4.8.6 After completion of negotiations, the procuring entity shall request all bidders remaining in the proceedings to submit, by a specified time and date, their best and final offer in respect of all aspects of their proposals.
- 4.8.7 The Purchase Committee shall keep record of all the bids received and prepare a comparative statement of the final bids received and evaluate these to determine the lowest or most advantageous offer. No negotiations with bidders shall take place in respect of their best and final offers.
- 4.8.8 The Purchase Committee after evaluation shall submit its recommendations specifying the lowest or most advantageous bid in writing along with the certificate of its satisfaction duly signed by all members in the format specified hereunder:  
 “Certified that we, -(1) -----(2) -----(3) ----- -----(names of members), members of the Purchase Committee for Competitive negotiations are jointly and individually satisfied that the subject matter of procurement recommended is of the requisite specifications and quality, priced at the prevailing dealer/wholesale market rate and the supplier recommended is reliable and competent to supply the subject matter of procurement.” (strike out what is not applicable).
- (Signatures of all the members of Committee)
- 4.8.9 While accepting the recommendations of the Purchase Committee, the procuring entity shall ensure that the successful offer is the lowest or most advantageous offer and that such bid price is not unreasonable or higher than the market price.
- 4.8.10 The Purchase Committee may recommend cancellation of the procurement process and initiation of fresh process, if the final bids received are found to be high or unreasonable or if the quality of the subject matter is not as per specifications or requirement.

**Example:**

- (i) Procurement of a particular variety of seeds which is mostly available locally. The sowing season has already arrived and there is no time left for a competitive bidding.
- (ii) procurement of relief material by the local administration for distribution in the cyclone affected areas.
- (iii) Procurement of a specific breed of Cows by a government owned Dairy Firm.

**4.9 Rate Contract (Rule 24 (I) (1) of the Rules)**

- 4.9.1 Section 36 of the Act says that the rate contract method may be used under the situations where:
  - a) the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;
  - b) by virtue of the nature of the subject matter of procurement, the need for it may arise during the given period of time;
- 4.9.2 The procedure for concluding Rate Contract and the for procurement in rate contract method shall consists of two phases
  - a) In the first phase, the rate contracts, including parallel rate contracts, where required, shall be concluded through Open Competitive Bidding without any commitment of quantum of procurement.
  - b) In the second phase, procurement of the particular subject matter in the required quantities, as essential and necessary to satisfy the public need, may be made from time to time by issue of supply or work orders at those rates during the period of the rate contract.
- 4.9.3 In the first phase, single envelop or two envelop bids, shall be invited by issuing Notice Inviting Bids as in the Open Competitive Bidding method incorporating following conditions in the bid documents:-
  - a) In the NIB and the Bidding Documents, approximate quantities of the requirement estimated on the basis of the annual off take shall be indicated along with the specifications, also mentioning that no minimum quantity of procurement is guaranteed;
  - b) The period of the rate contract shall be clearly indicated which shall normally be one financial year but may be shorter after recording the reasons if the Procuring Entity feels that market prices would fall significantly in the short term.
  - c) The terms and conditions of the rate contract shall include provision for liquidated damages similar to those prescribed for procurement by Open Competitive Bidding;
  - d) The procuring entity and the rate contract holder(s) are both entitled to cancel the rate contract by serving due notice to other party giving not less than fifteen (15) days' time;
  - e) The procuring entity reserves the right to renegotiate the price with the rate contract holders during the validity of the rate contract;
  - f) The rate contract shall be entered into for price, without commitment for quantity and time of supply of the subject matter of procurement, with the bidder of the lowest priced bid or most advantageous bid fulfilling the laid down eligibility and qualification criteria including past performance against such rate contracts, availability of ISI mark or service centres across the State and such other criteria as required and these conditions as applicable shall be specified in the bidding documents;

- g) The procuring entity shall also reserve its right to conclude parallel rate contracts with several bidders, in addition to the responsive lowest priced bid or most advantageous bid, but at the rates of such bidder;
- h) In case the price of lowest responsive bidder is considered high and not reasonable, negotiations may be held with lowest responsive bidder and rate contract may be concluded consequent only upon lowering of the bid price to the desired level. If otherwise, fresh bids shall be invited;
- i) The prices under a rate contract shall be invariably subject to 'price fall clause' and this shall be specified in the bidding documents and the subsequent Rate Contract.

**Explanation I:** A price fall clause is a price safety mechanism in rate contracts which provides that if the original rate contract holder quotes a lesser price or reduces its price to render similar goods, works or services at a price lower than the rate contract price to anyone in the State, at any time, during the validity of the rate contract, the rate contract price shall be automatically lowered or reduced accordingly to such lesser or reduced price quoted for the subject matter of procurement with effect from the date of such quoting or reducing, and the rate contracts shall also be amended accordingly.

**Explanation II:** In such cases, the firms holding parallel rate contracts shall also be given opportunity to reduce their price by notifying the lowered or reduced price allowing them fifteen days' time to intimate their acceptance to the revised price. Similarly, if a parallel rate contract holder firm reduces its price during the currency of the rate contract, its reduced price shall be conveyed to other parallel rate contract holders as well as the original rate contract holder for corresponding reduction in their prices. If any rate contract holders do not agree to the reduced price, further transaction with it shall not be conducted;

- j) If, consequent to invitation of bids, only one bid is received, or consequent to technical evaluation, if only one bid is found eligible or qualified, such bid shall be termed as 'single bid' in respect of that subject matter of procurement or item and in all cases where such single bid is received, bids may be handled on the lines of procedure laid down in Sub-rule (20) of Rule 23 for 'Lack of competition'.
- k) Rate contracts for Machine Tools, Information Technology Products, Original Equipment Manufacturer and Ancillary Spares and other similar such products, where the design feature, performance parameters, etc., vary significantly among the products of different manufacturers and even between different models of the same manufacturer and where equitable comparison of prices of such products or services is not feasible, may be finalised and concluded on the offered percentage of discount on Net Dealer Price (NDP) or discounted MRP basis, generally known as "Catalogue basis".
- l) **Parallel rate contracts:**
  - a) If the quantity required is beyond the capacity of the lowest bidder or the subject matter of procurement is of a critical or vital nature, rate contracts may be entered with more than one bidder in the order of their standing in the final evaluation of bids but at the successful lowest bid rate as parallel rate contracts. However, such provision for parallel rate contracts need to be specified in the bidding documents.
  - b) Where parallel rate contracts are needed though the price of lowest

<sup>4</sup> Two envelop system is the preferred practice.



responsive bidder is reasonable, the rate contract shall first be awarded to such lowest responsive bidder. Thereafter, the price of such lowest bidder shall be counter-offered to the responsive bidder quoting the next higher rate, or rates in case more than one parallel rate contractors are needed, with intimation to the lowest bidder, asking if they so desire to reduce their price and send revised bids accordingly in sealed covers or on e-procurement platform, to be opened in public at a specified place, date and time as per the prescribed procedure. Bidders who accept the counter-offered rate or rate lower than it shall be awarded parallel rate contracts.

If the lowest bidder also lowers its rate in its revised offer, the same may also be accepted with effect from that date and its rate contract amended accordingly. All such parallel rate contracts shall be awarded simultaneously for the sake of transparency.

- c) In cases where parallel rate contracts are necessary, and where even the bid quoted by the lowest responsive bidder is not reasonable, price negotiation shall be conducted with that bidder in the first instance. The rate contract may be concluded if that bidder agrees to bring down the price to the desired level and that price may be counter-offered to other responsive bidders for further action in identical manner as prescribed at (b) above. If however, the lowest bidder does not agree to reduce its price in the first instance itself, then the price which has been decided as reasonable may be counter-offered to all the other responsive bidders who had quoted higher prices and also to the lowest bidder for further action as in clause (b) above.

4.9.4 In the second stage, the supply or work order shall be placed to the rate contractor as and when needed at the contracted price for supply or execution of the required quantity of the subject matter of procurement mentioning the place of supply or execution and the delivery schedule.

4.9.5 The procuring entities shall ensure new rate contracts become operative right after the expiry of the existing rate contracts without any gap from the beginning of a financial year. In case it is not possible to conclude the new rate contracts due to unavoidable reasons, the existing rate contracts may be extended at the same rates, terms and conditions for a further period not exceeding another one financial year after ascertaining that the wholesale market prices of the subject matter of procurement or its constituents have not fallen during the period.

4.9.6 Except as otherwise provided for in this rule, all other provisions of these rules shall, mutatis mutandis, apply to procurement by rate contracts.

**Examples:**

- (i) Rate contract method is commonly used method for procurement of Medicines, Consumables, hospital furniture, tools and equipment as the requirements are recurring in nature throughout the year although the exact quantity of requirement may vary due to both internal and external factors. Secondly, in case of medicines and medical consumables as it has a self-life, it is not advisable to procure the entire quantity in one go and store them till consumed.
- (ii) A procuring entity (Say Panchayat Raj Department) had budgeted for procurement of 375 numbers of Desktop Computers along with printers, scanner and inverter system to be installed at all Gram Panchayat (GP) office, as and when they make their computer room ready. It is assessed that out of 375 GP offices only 100 GP offices are ready with the computer room (with air conditioning) at present and other GP offices are going to be ready in phased manner over a period of next 10 (ten) months. In this situation, Rate contract method shall be the preferred method.



- (iii) In case of works there is practice going for Item Rate Contract(IRC). In case of IRC unit rates are agreed for different item/type of construction. And the work order is issued as and when required and value is determined as per the contracted item rate.
- (iv) Housekeeping services for the offices, the procuring entity may finalise monthly charges per Sq. Ft. of office space valid for a period of one year through rate contract method, which can be used by different offices under it.

#### 4.10 Government e-Marketplace

- 4.10.1 Section 32(2) of the Act and Rule 24(1)(2), lay down the conditions under which the procuring entities may utilise the Government E-Marketplace (GeM) facility for purchase of their essential common use needs as available therein, subject to the condition that the rates for the items offered by suppliers in the GeM or the total cost involved thereof are not higher than the prevailing wholesale market prices in the State or the discounted rates of authorised dealers in the State as applicable. Government of India has established GeM for common use Goods and Services with the stipulation that credentials of suppliers on GeM shall be certified by GeM SPV, and procuring authorities will certify reasonability of rates (GFR Rule 149).
- 4.10.2 The procuring entities shall fulfil the requirements of the GeM portal pertaining to publication of their annual requirements for the common use goods and services on GeM within thirty days of approval of the annual budget. The demand for such goods and services shall not be divided into small quantities to make piecemeal purchases for avoiding procurement through L-1 buying or bidding or reverse auction on the GeM.
- 4.10.3 All such procurements through GeM shall be subject to the prior sanction of the concerned competent authority with reference to the relevant Delegation of Financial Power Rules in respect of the subject matter and value of the procurement.
- 4.10.4 Finance Department's detailed guidelines for such on-line procurement through GeM, including the procedure for making payments shall be followed, including any financial ceilings or any other conditions for the purpose.
- 4.10.5 Procurement through GeM is time and cost effective. Large number of suppliers and the items of Goods and Services are registered on the portal and ordering through GeM could be direct or through competitive process depending of the value of procurement and financial limits for such procurement. Placement of order and supplies could be much faster.
- 4.10.6 Most of the commonly used goods and services being procured by the procuring entity on an ongoing basis are available in the portal and the number of items are increasing day by day. Procurement through GeM portal is also suitable for bulk purchases.
- 4.10.7 The procuring entities first preference should be to procure through GeM portal if the subject matter of procurement is available /listed in the portal, unless otherwise there is valid reason to prefer other method of procurement.
- 4.10.8 **In pursuant to Rule 24 (1) (2) (iv) of the Assam Public Procurement Rules, 2020 Government of Assam has issued notification (No FEB.224/2021/5, Dated 28th January 2022) making GeM mandatory for all procuring entities for procurement of all goods and services that are available in GeM except in cases specified below:**
  - a) All the "Emergency Procurement" and "Urgent Works" as defined in APP Act, 2017 & APP Rules, 2020.
  - b) Procurement in ten Statutory Autonomous Councils.
  - c) Procurement done through Spot Purchase and Request for Quotation.
  - d) Any items to be notified by the department with due concurrence of the Finance Department.

**Examples:**

- (i) Procurement of office furniture, equipment, and fittings (both bulk and small quantity)
- (ii) Computers, Note Pads, Printers, and other IT accessories.
- (iii) Medical furniture, equipment, tools, etc
- (iv) Other electrical & electronics product, agricultural implements, etc
- (v) Cleaning and security services
- (vi) Hiring of Vehicles, etc

**4.11 Framework Agreement (Refer Rule 24(J) of the APP Rule,2020)**

- 4.11.1 When a procuring entity requires to procure a subject matter of procurement over a period of time and the quantity and timing cannot be specified in advance, it may, after recording the reasons and circumstances may use Framework Agreement Procedure for entering into a long-term Framework Agreement with suppliers or contractors or providers of consultancy or non-consultancy services setting the scope, and terms and conditions.
- 4.11.2 Framework Agreement method of procurement may be used for the following:-
- (a) Goods that can be procured off-the-shelf or common use goods with standard specifications that are needed from time to time by the Procuring Entity;
  - (b) Small value contracts for works under emergency as well as urgency situations;
  - (c) Small value consulting services that are of a simple and non- complex nature and are required from time to time by the Procuring Entity;
  - (d) Non-consulting services, such as hiring of vehicles, catering services, event management services, etc., whose scope can be pre-defined, and are required from time to time by the procuring entity;
  - (e) Standard or regular maintenance and repair;
  - (f) Quick restoration of essential public facilities;
  - (g) Prompt and continuing access to “on call” specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance;
  - (h) Retaining advisers, expert adjudicators, members of panels, or specialists or experts to participate in the design or implementation of complex tasks such as dispute resolution boards, institutional reforms, procurement advice, technical troubleshooting, legal counsel, Internal Audit, evaluation of safeguard issues, and other such service providers needed from time to time.
- 4.11.3 A Procuring Entity may establish a Framework Agreement for a period of not more than three years, with option to extend further for not more than one year, with one or more firms that are capable of delivering the specified goods, works, non-consulting services or consulting services at the required time, agreeing to the applicable terms and conditions in advance which shall include the fees, charge rates or pricing mechanism established through appropriate procedures consistent with the Fundamental Principles of Public Procurement prescribed in the Act including principles of advertisement, fair and open competition, effective and independent protest mechanism, transparent bid evaluation and selection criteria. There shall be no guaranteeing of any call-off contracts to the firms awarded such Agreements.
- 4.11.4 **Procedure for establishing Framework Agreement (FA)**
- (a) A procuring entity may establish a Framework Agreement through Open Competitive Bidding using appropriate RFP or bidding documents.
  - (b) The RFP or bidding documents shall, inter alia, include the following :-

- (i) a description of the goods, works, Non-Consulting Services or Consulting Services that the Framework Agreement is intended to cover;
- (ii) an estimate of the total volume or scope of the goods, works, non-consulting or consulting services for which call-off contracts may be placed and, as far as possible, the volume or scope and frequency of the call-off contracts to be awarded under the Framework Agreement;
- (iii) the qualification criteria as well as evaluation criteria and methodology;
- (iv) the terms and conditions of contract that shall apply to call-offs under the Framework Agreement which shall include the following information:
  - a statement that the fees, charge rate or pricing mechanism and any other associated costs shall be agreed with each firm and be valid for the term of the Framework Agreement;
  - a statement which explains that the Procuring Entity shall engage Framework firms as required through call-off contracts;
  - a statement specifying whether the agreement shall be a **Closed Framework Agreement** in which the panel of firms remain unchanged during the term of the agreement, except for firms removed for sufficient cause, with no additional or replacement firms added, or an **Open Framework Agreement** together with an outline of the selection process.
- (v) a statement indicating that there is no guarantee of being awarded a call-off contract, and no commitment is to be made with regard to volume of goods, works, non-consulting or consulting services;
- (vi) a statement that the Framework Agreement is not an exclusive agreement and that the Procuring Entity reserves the right to procure the same or similar goods, works, non-consulting or consulting services from firms that are not part of the Framework Agreement;
- (vii) a description of the circumstances that may lead to a firm being removed from the framework agreement and the process to be used in securing the removal;
- (viii) the secondary procurement method or methods that the procuring entity shall use to select a firm in the call-off process;
- (ix) the contractual method the procuring entity shall use to secure the call-off contract, like statement of supply order or work order, etc.;
- (x) the duration of the Framework Agreement, including any option to extend, which shall not be more than three years with option to extend for up to one more year at the most;
- (xi) the Procuring Entity shall issue a Notification of Intention to conclude a Framework Agreement clearly indicating whether single or multiple Agreements are intended.

#### 4.11.5 Procedure for hiring individual experts through FA

- (a) In case individual experts are required to be hired through Framework Agreement with service provider firms, the Request for Proposal document shall describe the requirement of different experts' relevant qualifications and expertise along with the selection criteria focusing on the relevant qualifications and expertise to enable firms to furnish the list of experts they commit to make available in their proposal.
- (b) The procurement entities shall, after due evaluation of proposals received, establish a list of qualified experts, which can include experts from different firms. The Procuring Entity and the Framework Agreement firms shall agree upon pre-established fee rates to be paid for the experts on standard conditions

of contract and such payments shall be made on the basis of the time actually usefully spent by the experts in providing the service.

- (c) Experts shall be selected from the list on the basis of a “call off” request with specific Terms of Reference (ToR) for the assignment and the comparative qualitative evaluation of the Curriculum Vitae of the proposed experts or the fee levels and a specific contract shall be signed for each assignment.

#### 4.11.6 Call-off contract for procurement under a Framework Agreement:

- (a) As part of the call-off process, firms shall be given a description of the scope of supply or tasks that they will be expected to provide. The statement of work or purchase order to be issued as part of the call-off process shall specify the objectives, tasks, deliverables, time frame and price or price mechanism. The price for individual call-off contracts shall be based on the fees, charge rate or pricing mechanism detailed in the Framework Agreement. A firm or individual expert shall be selected from the panel for the call-off process through secondary procurement using either or both of the following parameters:-
  - (xii) mini-competition based on objective criteria for call-offs that have been described in the Agreement, such as competitive quotes or Request for Quotations from some or all of the panel members based on the lowest evaluated cost or competitive bids or Request for Proposal with the bidding Document from some or all of the panel members, based on expertise, proposed solutions and value for money; and/or
  - (xiii) direct selection based on objective criteria for call-offs that have been described in the Framework such as either ‘location’ where call-off contracts are awarded to the firm that is best able to deliver at the required location or ‘balanced division’ of supply, scope, task, where an upper value limit is fixed and call-off contracts are awarded in turn on a rotational basis when a firm reaches the upper value limit.

#### Examples:

- (a) Procurement through Framework Agreements already existing could be very time effective obviating the need of issuing tenders for the Goods, Works and Services for which FAs have been finalised in advance for a pre-defined period.
- (b) The following are the examples of various types of Goods, small Works and Services which have repetitive unpredictable demands at various points of time and thus Procuring entities could finalise FAs for such Goods, Works and Services:
  - (i) FA with local contractors to carry out emergency/ small value works ( road repairing, construction of boundary wall, etc) as and when required
  - (ii) FA with different event management agencies for event management of small and large size public events to be organised by the Authority as and when required.
  - (iii) FA with different service providers for providing data entry service as and required by the authority under different programme.
  - (iv) FA with agency(s) for website development and maintenance as and when required by the authority.
  - (v) FA with legal firm to provide advises on court cases and to assist in preparing various other legal documents as and when required by the authority.
  - (vi) FA with different Agencies for provisioning of catering services for different public meeting.

#### 4.12 E-Commerce (Rule 24 (K) of the APP Rules,2020)

14.12.1 Procuring entities may choose to procure its essential common use needs through e-commerce websites in case the subject matter of procurement is not available on the Government E- Marketplace (GeM), subject to the provisions of the Act,

the guidelines that may be notified in this regard by the State Government, and, without exception, the condition that the rates for the items offered by suppliers in the e-commerce website such as Flipkart, Amazon, Pepperfry, Snapdeal, Myntra etc. or the total cost involved thereof are not higher than the prevailing wholesale market prices in the State or the discounted rates of authorised dealers in the State as applicable.

14.12.2 The concerned Purchase Committee of the procuring entity constituted for the purpose shall survey the e-commerce market place diligently to ascertain the specifications, quality and reasonableness of rate of the subject matter and identify the appropriate e-commerce website thereof and shall record the certificate prescribed below signed by all the members:-

“Certified that we, (1) .....(2) .....(3) .... (names of members), members of the Purchase Committee are jointly and individually satisfied that the subject matter recommended for procurement is of the requisite specifications and quality, priced reasonably, and that the subject matter of procurement is not available on the GeM and the e-commerce website recommended is reputed and reliable and competent to supply the subject matter in question.”

*(strike out what is not applicable)*

(Signatures of Committee members with names, designation, dates)

14.12.3 The State Government may prescribe procedures for making payments, maintenance of accounts and records for audit, etc. for such on-line procurement and issue guidelines for assessing the reliability and reputation of the available e-commerce websites and the vendors participating therein.

#### Examples:

- (i) This method may be used for procurement of items not available in the GeM portal or items which are available at a cheaper rate than GeM portal. This method should be adopted primarily for off the shelf items for which price comparison can be done easy. This could include office stationery, office equipment, electronic items, equipment, tools, etc.

### 14.13 Community Procurement for Community-driven Schemes

14.13.1 In line with Section 28(l) of the Act and Rule 24(L), this method of community procurement for community driven schemes, shall be adopted for procurement of inputs like, equipment, machinery etc., in community driven schemes where each beneficiary of such scheme, whether individual or group or community, is required to bear a part of the cost of such input by way of bank loan or otherwise as “beneficiary share.” This method of procurement enables the beneficiary to procure the schematic input item of their own choice by themselves, from a dealer selected by them, at their own preferred time and at the price specified in a ‘Rate-Bank’ established and published by the procuring entity.

14.13.2 The concerned Procuring Entity implementing such community driven scheme, duly approved, shall establish a ‘Rate-Bank’ consisting of the names of manufacturers of the specific input items, equipment or machinery with the list of their local dealers, brands and models with corresponding prices through a transparent and open competitive process as under:

- (a) The procuring entity shall first fix the minimum technical and quality specifications of the required input items for the community driven scheme and publish an open advertisement inviting all corresponding manufacturers to furnish or quote their rates along with the technical details and specifications of the inputs offered and the names and addresses of their local dealers.



- (b) The bidding document shall, inter alia, lay down the terms and conditions of the procurement with clear indication that no supply order shall be issued by the procuring entity at any time and shall also:-
  - (i) seek the willingness of the manufacturer to sell the input items to the beneficiaries of the scheme directly at the pre-determined price and to provide necessary after-sales service thereof;
  - (ii) mention the exact amount fixed as Government share in rupees for each of the input items, brands and models, clearly indicating therein that the balance amount shall be paid by the respective beneficiary.
- (c) The manufacturers whose products meet the laid down technical specification and who agree to the terms and conditions laid down in the bidding document including the community procurement process, shall be included in the 'Rate-Bank' along with their offered brands, models and corresponding prices as well as the names of their local dealers.
- (d) The Procuring Entity shall sign a contract with all the manufacturers included in the 'Rate- Bank'.
- (e) The 'Rate-Bank', along with the procedure that the beneficiaries are required to follow to procure the input item under the community driven scheme, as well as the list of the eligible beneficiaries with details, shall be published in the State Public Procurement Portal as well as the Departmental website by the procuring entity and also given wide publicity.
- (f) The eligible beneficiaries shall be free to choose the brand and model of the input item at the corresponding price as well as the particular dealer from the published 'Rate-Bank'. They shall inform the concerned dealer as well as the local office of the Procuring Entity of their specific choice through an application- cum-agreement form made available in the State Public Procurement Portal and the Departmental website, at least ten working days before the procurement, and procure the input item thereafter accordingly by paying their share of the cost or the difference between the listed rate for the chosen brand, model and the pre-fixed Government share, as the case may be.
- (g) The concerned dealers shall maintain records and evidences as prescribed by the Procuring Entity and shall submit the same along with the bills to the Procuring Entity for payment of the Government share. The procuring entity shall release the payment to the concerned dealers after due verification of the bills and shall maintain all records, invoices, and evidence for audit.

**Examples:**

- (i) Procurement of Sewing machines to be used by Self Help Groups.
- (ii) Procurement of solar water pump set for micro-irrigation to be distributed among the beneficiaries under a subsidy scheme.

**14.14 Construction Committees**

14.14.1 Invoking powers under subsection (n) of section 28 of the APP Act, 2017 procurement through 'Construction Committees' has been included vide Rule 24(N).

14.14.2 As per the Rule for execution of works under MP- LADS / MLA-ADS / Schemes under Untied Funds, etc., District Officers (Deputy Commissioners, Additional Deputy Commissioners, District Development Commissioners, Sub-Divisional Officers, Block Development Officers etc.) may assign execution of small works identified under



these schemes to construction committees constituted as per the composition prescribed in the relevant Rules provided that,

- (i) for the duration of execution of the work, all members of the Construction Committee shall be deemed to be public servants and shall be subject to the provisions of the Prevention of Corruption Act, 1988;
- (ii) the construction committees may procure the construction materials and goods using the spot purchase method subject to the monetary thresholds specific to the construction committees, as may be notified by the Finance Department from time to time and other relevant guidelines issued in this regard by the Transformation and Development Department;
- (iii) the construction committee may get the work done through hired/ outsourced labour;
- (iv) working, oversight and accountability of the Construction Committee, and initiation/ execution/ certification of work shall be strictly as per the rules notified by the State Government in this regard;
- (v) the value of such works does not exceed Rs. 50 Lakhs, provided further, that Finance Department may issue further notifications in this regard, reducing this limit, from time to time and in such case, the revised limit as notified by the State Government shall be applicable. The Finance Department may separately notify the monetary thresholds for Spot Purchases by construction committees, and may also issue notification providing exemption from mandatory use of e-procurement mode for procurements through construction committees.

#### **Examples**

- (i) Construction of community hall/bus shed/library building /boundary wall or such other construction work within the prescribed financial limit from above mentioned funds.

## Methods of Procurement

### Contents:

- a) Swiss Challenge Method
- b) Procurement of non-consulting services.

### 1. Swiss Challenge Method

#### 1.1 Swiss Challenge Method of Procurement

1.1.1 The Swiss Challenge Method of procurement, as defined in the Act, may be adopted to procure public assets or services that fulfil any essential and important public need though such public need may not have been specifically or completely determined by the procuring entities or originally included in their procurement plan. However, no such procurement shall be taken up, if the public need sought to be fulfilled by such procurement is not essential or not well defined or ambiguous or falls under the negative list notified by the State Level Empowered Committee constituted by the State Government for the said purpose under these rules. Also, the provisions of the relevant Delegation of Financial Power Rules, 1999 as amended from time to time shall be applicable.

1.1.2 Clause (zf) of Section 2 of the Act defines Swiss Challenge as a method of procurement in which an unsolicited proposal for a government project is received and third parties are allowed to challenge the original proposal through open bidding, and then the original proponent is given a chance to counter-match the most advantageous / most competitive offer.

#### 1.2 Eligible sectors under Swiss Challenge Method

The Swiss Challenge Method of procurement may be adopted in the sectors or sub- sectors as specified in the Schedules which shall be notified by the Finance Department.

#### 1.3 Projects not acceptable under Swiss Challenge Method

The following types of proposals or projects shall not be accepted or processed under this method:

- a) which contravene the provisions of any law in force;
- b) which would result in monopolistic situations;
- c) Proposals or projects in sectors that are not notified by State Government;
- d) Proposals below any threshold value that may be fixed for the purpose by Notification issued by the State Government;
- e) Proposals for Public Private Partnership Projects involving financial assistance from State Government by way of viability gap funding, by whatever name called, of more than twenty percent of the project cost excluding the value of land and all kinds of contingency or administrative charges, by whatever name called, included therein, if any;
- f) Proposals which are likely to have adverse effect on the environment or disturb the ecological system or biodiversity or the livelihood or occupational patterns in any area.

#### 1.4 **Competent Authority for deciding procurement by Swiss Challenge Method**

- 1.4.1 The State Government shall constitute a State Level Empowered Committee (SLEC) chaired by the Chief Secretary with the Senior-most Secretary of the Transformation and Development Department as Member-Convenor and the Heads of Finance and the concerned Administrative Department(s) as Members. In cases where the project proposal in question covers eligible sectors that fall under the purview of different Administrative Departments, all the Heads of those Administrative Departments shall be included as Members. In case the project proposal relates to an Agency fully owned by the State Government, the Chief Executive Officer, or any other competent authority, of that Agency shall be included as a member. The Senior-most Secretary of Environment and Forest Department of the State shall invariably be included as Member in the SLEC whenever the project proposal under consideration is so designed that it is likely to have an impact, even remotely, on any aspect of the environment or biodiversity or ecology.
- 1.4.2 The SLEC shall be the competent authority for deciding whether Swiss Challenge method shall be adopted for procurement by the State Government as well as, in cases where such procurement is proposed to be done with substantial funding from the State Government, for the various undertakings, Agencies and Bodies, etc. under it. The State Government may prescribe a financial threshold related to the estimated cost of the proposed project below which proposals need not be submitted to the SLEC and may be decided upon by the Head of the concerned Administrative Department in consultation with the Transformation and Development Department.
- 1.4.3 The SLEC may co-opt as member, or members, other officials of the State Government having expertise on issues relating to the project proposal or any of its components or, instead of so co-opting, seek and obtain the views and advice of any officer of the Union Government or the State Government or the various types of Undertakings under them or any other person having professional expertise in the relevant matters.
- 1.4.4 The SLEC shall examine and consider proposals placed before it along with the recommendations of the concerned Administrative Department as well as the views of the Transformation and Development Department and take a decision as to whether the Administrative Department shall be permitted to proceed with the proposed procurement with or without any specific modifications or whether the proposal shall be rejected.
- 1.4.5 The SLEC may call for clarifications relating to the proposal from the project proponent and such clarifications shall be provided within the specified time.
- 1.4.6 On receipt of the communication of the decision of the SLEC from the Transformation and Development Department, the concerned Administrative Department shall take further action. In case the proposal is rejected by the SLEC, the Head of the concerned Administrative Department shall forthwith communicate the decision to the project proponent within five working days from the date of receipt of such communication.

#### 1.5 **Procedure for procurement through Swiss Challenge Method**

- 1.5.1 The Project Proponent or his authorized representative, shall submit an application,

along with the certificate and the details of the project proposal respectively in Form No. 2 and Form No. 3 appended to the Procurement Rules, to the Administrative Department, along with the pre-feasibility report and, if available, the Detailed Project Report. The contents of pre-feasibility report shall be as specified in Form No. 4 and the contents of the Detailed Project Report shall be as specified in Form No. 5 of the Rules.

- 1.5.2 The Administrative Department shall scrutinize the proposal to determine whether it falls within the purview of the development plans of the Department and whether the “Public Need” is clearly established and whether the proposal prima facie addresses that public need and requirement.
- 1.5.3 If the Administrative Department finds that the proposal is unique and appropriate and satisfies public need, it shall record the reasons thereof and process it for submission to the SLEC through the Transformation and Development Department with its recommendations and comments indicating budget provisions. In case the Administrative Department finds that the proposal has no uniqueness and is similar to the procurement of goods, services, works or projects procured through conventional or other methods, then the Administrative Department shall reject the proposal under Swiss Challenge Method and intimate the project proponent accordingly.
- 1.5.4 However, if the Administrative Department considers that the proposal meets essential and important public need and is appropriate to be taken up under the Swiss Challenge Method, despite it being similar to the procurement being done under conventional methods, it may process it under the Swiss Challenge Method, as prescribed after recording the reasons.
- 1.5.5 The Transformation and Development Department shall convene meeting of the SLEC and place the proposal before the SLEC with its views thereon. The SLEC, after examination of the proposal and the suitability of available budget provision or funds for the purpose as relevant, may either accord permission to proceed, with or without modifications, or reject the proposal with reasons.
- 1.5.6 The Senior-most Secretary of the Transformation and Development Department shall thereafter convey such decision of the SLEC to the concerned Administrative Department. If permission to proceed is accorded by the SLEC, the Administrative Department shall publish and exhibit the proposal, with such modifications as decided by the SLEC, on the State Public Procurement Portal.
- 1.5.7 The Administrative Department shall, on receipt of permission of the SLEC to proceed, shall inform the project proponent in writing requesting conduct of detailed studies after incorporating modifications, if any and submission of detailed and comprehensive proposal in Form No. 6 appended to these rules along with the Detailed Project Report required for bidding within a period of three months from the date of such written communication. However, the Administrative Department may extend the time period of three months in case the project proponent is unable to submit the comprehensive proposal with Detailed Project Report for reasons and circumstances beyond the control of the project proponent.
- 1.5.8 If the project proponent fails to submit the detailed and comprehensive proposal

within the specified period or extended period, the Administrative Department may, at its discretion, exercise the option to develop the project on its own or through its agencies or through any third party, without the project proponent having any claim thereon. If the Administrative Department exercises this option in the manner as specified above, it shall exhibit the developed proposal in the State Public Procurement Portal.

## 1.6 Preparation and submission of comprehensive proposal

- 1.6.1 The project proponent shall submit the detailed and comprehensive proposal in Form No. 6 appended to the Rules and the detailed project report as well the details of bid value, financial proposal including Internal Rate of Return (IRR) calculations, etc., with supporting documents wherever necessary, project financial summary in Form No. 7 and the check list for submission of documents in Form No. 8 appended to the Rules in hard copy and soft copy along with Earnest Security equal to 0.05% of the estimated cost of the project to the concerned Administrative Department within the specified or the extended period.
- 1.6.2 The project proponent shall ensure that all financial reports and the documents having financial details submitted by it are duly verified by a competent Chartered Accountant and those reports and documents that are not so verified shall not be considered as valid.
- 1.6.3 The Administrative Department may carry out additional studies for independently determining the project costs, revenues, viability and risk analysis etc. for proper benchmarking.
- 1.6.4 The project proponent shall submit the detailed and comprehensive proposal prescribed herein in two covers. The first cover shall include the detailed project report with costs thereof, the survey data, specifications, inputs, outputs or outcomes, as well as designs, estimated cost of the project, along with Earnest Security etc. The detailed project report shall include the details as specified in Form No. 5 appended to the Rules. The first cover shall be opened by the Administrative Department, or by a Committee specifically constituted by it for the purpose.
- 1.6.5 1.4.5 The bid value shall be submitted in a separate second cover duly sealed by the project proponent which shall be kept in safe custody by the Administrative department to be
- 1.6.6 opened later by it or by the Committee constituted for the purpose, at the time of opening of the financial bids received from other bidders through the Open Competitive Bidding process.

## 1.7 Earnest Security

- 1.7.1 The project proponent shall furnish interest-free Earnest Security amounting to a percentage of the total estimated cost of the project, as notified by the Finance Department from time to time, in the form of bank guarantee from a scheduled bank or any other acceptable instrument with a validity period of not less than 180 days commencing from the date of receipt of the comprehensive proposal by the Administrative Department including claim period of sixty days. The validity period may be extended as mutually agreed, from time to time. The bid shall be summarily

rejected if the detailed and comprehensive proposal is not accompanied with the Earnest Security.

## 1.8 Bid Security

- 1.8.1 In case bidding process is initiated for the proposed project by the concerned Administrative Department, the project proponent shall also deposit the requisite bid security as specified in the bidding document.
- 1.8.2 The bid security shall be calculated on the basis of the total estimated cost of the project as per the Detailed Project Report and the amount thereof shall be specified in the bidding documents.
- 1.8.3 The project proponent shall furnish the bid security as specified in the bidding document by the last date and time fixed for submission of bids in the bidding process for the proposed project. The Earnest Security furnished by the project proponent earlier shall be adjusted against the bid security.
- 1.8.4 If the project proponent fails to furnish Bid security of the required amount within the time specified in the bidding document, the Earnest Security furnished earlier shall be forfeited and the project proponent shall cease to have any right as the project proponent.

## 1.9 Cost of Detailed Project Report (DPR)

- 1.9.1 The direct cost of preparing the Detailed Project Report shall be mentioned by the project proponent in its proposal with necessary documents. The cost may include external payout, internal cost, and taxes, all accompanied by original receipts.
- 1.9.2 The Administrative Department or the Committee constituted for this purpose, shall negotiate the cost of preparation of the detailed project report with the project proponent and ensure that the assessment of the cost of preparing the detailed project report is reasonable and justified.
- 1.9.3 Subject to such cost having been actually incurred by the project proponent, the cost of preparation of detailed project report as determined under (b) above shall be reimbursed to the project proponent only if a different bidder or challenger other than the project proponent is the successful bidder, and only after the procuring entity has entered into an agreement with such successful bidder for the project. Such reimbursement of the cost of preparation of Detailed Project Report shall not exceed 5% of the total estimated cost of the project.
- 1.9.4 The cost of preparation of the Detailed Project Report payable to the project proponent, shall be recovered from the successful bidder immediately on acceptance of bid but before signing of the contract document with the successful bidder and, thereafter, reimbursed to the project proponent if such cost has been actually incurred by it. However, the cost of preparation of the detailed project report shall not be reimbursed and therefore not recovered, if the project proponent had failed to furnish the required bid security.
- 1.9.5 In case, for any reason whatsoever, the project is not taken up by the Administrative Department, the cost of preparation of the Detailed Project Report shall not be reimbursed to the project proponent.



## 1.10 Clarifications on the Detailed Project Report

1.10.1 No changes shall be permitted in the Detailed Project Report once the project proponent submits it to the concerned Administrative Department. However, the Administrative Department may seek clarifications with respect to the Detailed Project Report from the project proponent and these clarifications shall be attached as an addendum to the Detailed Project Report.

## 1.11 Bid Parameters and Bid Value

1.11.1 The project proponent shall submit the detailed and comprehensive proposal along with the bid parameters and bid value as provided for. The concerned Administrative Department shall decide the bid parameters and shall have the authority to make changes to the project proposal as per the public need or requirement and its development plans without changing the basic theme and fundamental structure of the project proposal. Any such change made in the proposal shall be intimated to the project proponent by the concerned Administrative Department and, if required, additional time of a maximum of fifteen working days may be allowed to the project proponent for submitting the final bid value.

1.11.2 If such additional time is allowed as at (a) above, the project proponent shall submit the final bid value in such form as may be required by the Administrative Department. After submission of the final bid value by the project proponent, the original bid value submitted by the project proponent shall become inoperative.

1.11.3 The final bid value shall be submitted by the project proponent in a separate cover, duly sealed by the project proponent, which shall be opened only at the time of opening of the financial bids received from bidders through open competitive bidding. In case, the project proponent desires to give additional information, such information may be enclosed in a separate cover.

1.11.4 After submission of the final bid value by the project proponent, the Administrative Department shall submit the proposal with appropriate recommendations to the Transformation and Development Department for placing before the SLEC.

1.11.5 If the project proponent agrees to match the lowest or most advantageous bid within the specified time period, the project proponent shall be selected and awarded the project. In case the project proponent fails to match the lowest or most advantageous bid within the specified period, the other responsive bidder who successfully submitted the lowest or most advantageous bid shall be selected and awarded the project.

## 1.12 Bidding Process

1.12.1 Save as otherwise provided for in these rules, the procedure prescribed for the Open Competitive Bidding Method shall, mutatis mutandis, apply in the case of bidding under the Swiss Challenge Method of procurement. Open Competitive Bidding shall be initiated by the Administrative Department as per the prescribed procedure for the purpose and also in accordance with e-procurement procedure where applicable.

1.12.2 Except for proprietary technology details constituting intellectual property rights contained therein, the Detailed Project Report shall be shared with prospective

bidders and also uploaded in the State Public Procurement Portal so as to ensure fair competition and wide competitive bidding.

- 1.12.3 The bidding document, among other essential clauses, shall incorporate details about the necessary clearances or approvals to be taken from the respective authorities indicating who shall be responsible for obtaining these, keeping in view the nature and requirements of the project. Also, the bidding document shall clearly incorporate the clause that the Open Bidding Process has been taken up under the Swiss Challenge Method of procurement.
- 1.12.4 After examination and evaluation of the bids by the Bid Evaluation Committee, if the proposal of the project proponent is found to be lowest or most advantageous in accordance with the evaluation criteria as specified in the bidding document, the project proponent shall be selected and awarded the project. In case any other responsive bidder is the lowest or most advantageous bidder, the project proponent shall be given an opportunity to match the lowest or most advantageous bid within a maximum period of fifteen working days.
- 1.12.5 If the project proponent agrees to match the lowest or most advantageous bid as provided for in sub-clause (1.12.4) above within the specified time period, the project proponent shall be selected and awarded the project. In case the project proponent fails to match the lowest or most advantageous bid within the specified period, the other responsive bidder who successfully submitted the lowest or most advantageous bid shall be selected and awarded the project.

### **1.13 Transaction Advisor**

- 1.13.1 The Administrative Department concerned may appoint a Transaction Advisor for the project or entrust such responsibility to an officer of the Department for that purpose. The Transaction Advisor or the officer so entrusted should be capable of providing technical, financial and legal advice and assisting the Administrative Department concerned in the entire process of finalization of the successful bidder and award of contract.
- 1.13.2 In case, the Administrative Department desires to appoint a Transaction Advisor for a project proposal received under Swiss Challenge Method, it shall initiate the process of the appointment of the Transaction Advisor immediately after the permission to proceed is granted by the SLEC in order to save time in the process. In any case, the process of the appointment of the Transaction Advisor shall be completed by the Administrative Department before submission of Detailed Project Report by the project proponent.
- 1.13.3 The functions and responsibilities of the Transaction Advisor if appointed, or the officer entrusted for the purpose, hereinafter also referred to as the Transactional Advisor, shall be as laid down herein below:
  - (i) to examine the detailed project report with respect to technology, technical specifications, cost estimates, drawings, Internal Rate of Return (IRR), Net Present Value (NPV), Equity debt ratio, Value for Money analysis, etc., and necessary approvals whether statutory or otherwise required for the implementation of the project, etc.;

- (ii) to carry out additional studies for independently determining the project cost, project revenues, viability and risk analysis etc. including Value for Money analysis to ensure proper benchmarking, if so required by the Administrative Department;
- (iii) to specify broad parameters regarding environment and social safeguards in the bid document that need to be adhered by the concessionaire during the implementation period;
- (iv) to assist the Administrative Department to get necessary approvals from the appropriate authorities for the implementation of the project;
- (v) to develop bidding documents such as Request for Qualification (RFQ), Request for Proposals (RFP) and Concession Agreement, and submit to the concerned Administrative Department for approval. The bidding criteria shall be designed in such a way that maximum competition is ensured;
- (vi) to assist the Administrative Department concerned with the bid process management, including issuance of Request for Proposal (RFP) formulation of responses to bidder queries, bid evaluation and recommendations as per the criteria mentioned in the RFP document, recommending a bidder, contract negotiations and bid closure which are required to be undertaken for bringing the project to a close;
- (vii) to submit all the documents required for necessary approvals to the Administrative Department. They shall not provide any document to the bidders or any other persons without explicit written consent from the Administrative Department concerned; and
- (viii) to perform any other function or task assigned by the Administrative Department.

#### 1.14 Time Frame for the total process

- 1.14.1 The time-frame for procurement through Swiss Challenge Method shall be as specified in the Schedules which shall be notified by the Finance Department subsequent to the notification of these rules. However, if appropriate and found justified in a particular case, the concerned Administrative Department, in consultation with the Transformation and Development Department, may relax the time period specified in the Schedules after recording the reasons and justification thereof.

#### 1.15 Eligibility criteria for the Project Proponent

- (a) Any legal entity or person, including a Joint Venture or Consortium shall be eligible for submitting proposal as project proponent, if:
  - i. the person or lead member has an average turnover of minimum of 100% of the proposed project cost over the three previous financial years and in case of Joint Venture or Consortium, an average turnover of minimum of 100% of the project cost over the three previous financial years by the lead member. The audited balance sheets of the three previous financial years shall be submitted by the project proponent to indicate eligibility under this criterion;

- ii. the person or lead member, or any other member of the Joint Venture or Consortium, has experience in handling at least one project in the sector in which the proposal is being submitted costing not less than 100% of total project cost over the last 10 years and, where the contract has been awarded and work has been completed, the relevant work order and completion certificate from the client shall be submitted by the project proponent;
  - iii. the person or lead member is presently not debarred or blacklisted by Central Government or any State Government or any Government Undertaking or Agency. An undertaking to the effect that he has not been blacklisted shall be submitted by the project proponent;
  - iv. the person or lead member shall necessarily fulfil the pre-qualification or qualification criteria or parameters for bidders as specified in the bid document issued by the Administrative Department for the Open Competitive Bidding process for the project.
- (b) In case of Consortium, a person authorised through power of attorney executed by all the members in his favour shall sign the proposal on behalf of all the members of the Consortium and such power of attorney shall be submitted along with the proposal.
- (c) In case of Joint Venture or Consortium, the Lead Member and the member of Joint Venture or Consortium, on the basis of whose technical capability, the technical eligibility of Joint Venture or Consortium for the project is decided, shall not be allowed to exit from the Joint Venture or Consortium and an undertaking to that effect shall be submitted along with the proposal.
- (d) The following, as the case may be, shall be submitted along with the proposal by the project proponent :-
- i. in case of a Company, the certificate of incorporation;
  - ii. in case of a Firm, the certificate of registration; and
  - iii. in case of a Partnership Firm, the partnership deed.

#### 1.16 Power to call off the Project

The Administrative Department concerned shall have the right to call off the project without assigning any reason thereof at any time during the procurement process till an agreement with the project proponent or the other successful bidder has been entered into. However, once the agreement is duly entered into and signed by the Administrative Department concerned, the respective clauses of the agreement entered into shall apply and if the Administrative Department calls off the project in the manner specified herein, the same shall be exhibited by the Administrative Department on the State Public Procurement Portal and such project shall not be reopened in future except with the express consent of the project proponent, wherein its status as the project proponent shall be retained even if modifications had been made therein as prescribed.

##### To summarise:

- An organization presents a project idea requiring government's participation. This entity is called as Project Proponent.

- Procuring entity evaluated the idea and submits to the Government (State Level Empowered Committee) who decides whether the idea is worth consideration.
- If the Government decides to go ahead, Project Proponent prepares a DPR along with a financial proposal which is kept unopened.
- Government floats competitive bid; opens Project Proponent's financial bid along with others.
- If L1 is other than project proponent, L1 is given an opportunity to match L1's bid.

**Examples where Swiss Challenge method is recommended:**

- (a) Development of a new tourist location/spots to attract national and international tourists.
- (b) Development Rapid Transport System in a City to improve transport facility and reduce traffic congestion
- (c) Develop Biomedical Waste Management facility across the state

## 2. Procurement of Non- Consultancy Services

**2.1** Subject to the provisions of the Act, the General Principles of Procurement as prescribed in the Procurement rules, the Administrative Departments, Heads of Departments, Boards, Corporations and Bodies that are fully owned and controlled by the Government may, if required in the public interest, procure specific, well defined essential non-consulting services in the interest of economy and efficiency in the meeting of a public need and, while doing so, set guidelines containing detailed instructions and procedures to be followed by the service providers of such non- consulting service.

**Explanation:** The “Non-Consulting Services,” as distinguished from “Consultancy Services,” means any subject matter of procurement, other than goods or works except those consequential or incidental to that service or subject matter, that involve physical, measurable deliverables or well defined outcomes, where performance criteria or standards can be clearly identified and consistently applied. These services include maintenance, transportation, hiring of vehicle, outsourcing management of building facilities, management, security, catering, reprography, photocopier service, janitor, office errand services, drilling, aerial photography, video recording, satellite imagery, survey, mapping, Information Technology related services like website design, maintenance, etc.

## 2.2 Procedure for Procurement of Non-Consultancy Services

### 2.2.1 Identification of the requirement:

The procurement entity shall clearly identify the exact nature of the non-consultative service required in order for a public need to be meet, and define the services and tasks involved therein that are to be delivered by the non-consultancy service provider together with the performance or quality parameters thereof.

### 2.2.2 Preparation of Bidding Document:

The procuring entity shall prepare the relevant bidding documents containing details of the non-consultancy service which shall, inter alia, contain:

- (a) The details of the work or service to be performed by the service provider;

- (b) The facilities and inputs which shall be provided to the service provider by it;
- (c) Eligibility and qualification criteria to be met by the service provider for performing the required service;
- (d) The statutory and contractual obligations to be complied with by the service provider;
- (e) The code of conduct and other norms to be followed while providing the service;
- (f) The time, dates and place for submission and opening of bids;
- (g) The criteria for evaluations of bids and terms of contract.

#### 2.2.3 Invitation of Bids:

The procuring entity shall publish notice inviting bids in the State Public Procurement Portal. In case of an offline procurement, the procuring entity shall publish an abridged notice in newspapers indicating the address where details are available as prescribed in these rules. Not less than three weeks' time counted from the date of publication of last advertisement shall be provided for submission of bids to ensure wide competition and sufficient time for preparation of bids.

#### 2.2.4 Evaluation of Bids Received:

The Bid Evaluation Committee shall evaluate segregate, rank all responsive bids and select the successful responsive bidder for execution of the contract as specified in the bidding document. Late bids shall not be considered.

#### 2.2.5 Framework Agreement:

A procuring entity may also opt to adopt the Framework Agreement method of procurement for non-consulting services, such as hiring of vehicles, catering services, event management services, etc., whose scope can be pre-defined, and are required from time to time by the procuring entity.

#### 2.2.6 Monitoring the Contract:

The procuring entity shall involve itself throughout in the conduct of the non-consultancy contract and continuously monitor the performance of the service provider, ensuring in terms of the contract.

### 2.3 Save as otherwise provided for in this rules, the provisions contained herein apply, mutatis mutandis, to the procurement of all Non-Consultancy Services.



## Code of Integrity, Conflict of Interest, Offences & Penalties and Risks

### 1. Introduction

**1.1** Utmost diligence is essential in public procurement, as people's money and safety are at stake. This calls for utmost honesty, ethics and transparency in all actions that the public officials perform. Spectrum of concepts include the following:

- Morals
- Values
- Integrity
- Ethics
- Codes and Law

### 1.2 Values and Morals

Values and morals are belief system, they can be defined as those things that are important to or valued by individuals, groups or organizations. Values are more personal and individual having a broader concept, whereas morals have a greater social element and tend to have wider acceptance. Values and morals determine 'what is right and what is wrong'. Values and morals help us to identify the relative level of importance of the elements in our belief system particularly so, when we must trade off compliance between one element of values and morals and another, therefore values and morals are extraordinary important tools to making judgments, assessing probable outcomes of contemplated actions and choosing among alternatives. Values and morals are neither written down nor overtly prescribed by the society, they are more of voluntary beliefs. Values and morals do not have any prescribed retribution for transgressions whoever, they may attract social sanctions.

### 1.3 Integrity and ethics

Integrity and ethics are values and morals in actions. Integrity and ethics evolve into well-founded standards of what individuals are expected to do in terms of rights, obligations, fairness or specific values and morals which benefit the society.

### 1.4 Codes and Laws

**1.4.1** Codes are written standards of behaviour and professional matters along with specified retributions for transgression. Codes of a profession may not have the force of law, but they do have punitive consequences for its members. Laws determine whether the act is permissible and if not, what should be the legal punishment? In the Codes and Laws, there is stress on judgment of the behaviour and punishment of transgressors. The Assam Public Procurement Act, 2017 has been enacted to ensure that all actions of the persons involved in the entire procurement process are taken as per the Law. Section 11 of the Act lays down the Code of Integrity for the Procuring Entity and the Bidders.

**1.4.2** As we move from logic concept of values and morals to specific concept of codes and laws we move from voluntary to prescriptive, from beliefs to behaviour, from generalities to specifics, from focus on positives to negative and from social sanctions to punitive actions.

- 1.4.3 3 Even if one has never broken any laws or codes whoever, one cannot say that one lived one's best, this is because being part of civilized society means to go beyond what the law demands of us. It means to live according to values and morals, integrity and ethics, most of which ask much more of us than the codes and laws do.
- 1.4.4 The answer to "What should I do?" should therefore not be what can I get away with legally? but what does integrity and ethics ask for and what do values and morals require of me?
- 1.4.5 Let us take an example of a criminal defence lawyer having a brief to defend a person charged with murder. Though the lawyer's values and morals may urge him to ensure justice for the deceased victim, the code and ethics of his profession enjoin upon him to defend his client as strongly as possible. Professional code and ethics mostly override personal values and morals for the greater good of upholding a justice system in which the accused are given a fair trial.

## **1.5 Obligations of the Stakeholders of Public Procurement**

- 1.5.1 The stakeholders of public procurement i.e. Procuring Entities, Officials, Authorities, Bidders, Suppliers, Contractors and Consultants, etc., form an integral part of the public procurement. It is essential that they all observe highest standard of ethics during the entire procurement process including execution of contracts.

## **2. Unethical Practices in Public Procurement**

### **2.1 Corrupt Practice**

Means the offering, giving, receiving, or soliciting, directly or indirectly of anything of value to influence improperly the action of any other party, including a public official at any stage in the procurement process including contract execution;

#### **Examples:**

*The bidder/contractor offering money or anything of value for seeking information about a tender which is not in the bidding document or for seeking favour in settling of the tender for their firm or seeking favour during contract execution in regard to the work done, supplies made or not made, quality issues in the work or supplied items from the officials involved in the procurement process and execution and vice-versa i.e. officials involved solicit money or anything of value for such favours. There could be many more such situations in the entire process.*

### **2.2 Fraudulent Practice**

Means misrepresentation and omission of facts to influence procurement process or execution of contract, it can be direct and indirect at any stage of the procurement process.

#### **Examples:**

*The Bidder/Contractor/Firms may misrepresent about their financial capacity, their experience or may not provide correct information about the pending litigation/dispute cases outstanding against them, their production capacity etc., by producing fake or forged document. There could be many such situations which would fall under fraudulent practices.*

### **2.3 Collusive Practice**

Means an arrangement between two or more parties directly or indirectly with or without

the knowledge of purchaser, designed to influence improperly the actions of another party including to establish bid prices at artificial and non-competitive levels.

**Examples:**

*Two or more of bidding firms/contractors may collude in putting their bids in a particular District or area of operation to support each other in bidding. They would collude and know the prices being quoted by them in a manner that each of them becomes successful bidder turn by turn in various tenders/areas of work even by quoting artificially higher prices. Bidders in some areas may even collude not to put a bid so that the other bidder come in an advantageous position. There could be many such situations of collusion among the bidders.*

**2.4 Coercive Practice**

Means impairing or harming or threatening to impair or harm directly or indirectly, at any stage, persons, or their property to influence improperly their participation in the procurement process or to affect the execution of a contract.

**Examples:**

*The bidding firm(s)/contractor(s) may coerce other bidder(s)/contractor(s) and threaten not to put their bid. Such situations are seen in remote areas where such bidding firm(s)/contractor(s) prevent others in submission of their bids where physical bidding is taking place. Such coercion may not be possible in e-procurement system, but they might resort to other form of coercion and may not permit other successful bidder from executing the contract.*

**2.5 Obstructive Practice**

Means (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede the purchasing organisation's investigation into allegations of unethical practices mentioned above and/or 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 (ii) acts intended to materially impede the exercise of the Procuring Entities' rights of audit or access to information.

**Example:**

*The bidder firm/contractor might have submitted certain documents which have misled the Procuring entity (PE) in taking a decision and later it comes to the notice of PE warranting penal action against the firm. The Firm could try to destroy the documents submitted with the bid in connivance with the staff of PE. In some other case for execution of works, the Engineer might try to destroy certain documents relating to the quality test result of a firm warranting action against the Engineer and the Firm.*

**3. Conflict of Interest (Rule 6 of the APP Rules, 2020)**

**3.1** Conflict of interest for a procuring entity or its personnel and bidders is considered to be a situation in which a party has interests that may improperly influence performance of its duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

**3.2** The situations in which a procuring entity or its personnel may be considered to be in conflict of interest include, but are not limited to the following:-

- (a) a conflict of interest occurs when the private interests of a procuring entity or its personnel, such as personal, non-official, extra- professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of its professional functions or obligations as a procurement official;
- (b) within the procurement environment, a conflict of interest may arise in connection with such private interests as personal investments and assets, political or other social activities and affiliations while in the service of the procuring entity, employment after retirement from service or employment of relatives or the receipt of a gift that may place the procuring entity or its personnel in a position of obligation;
- (c) a conflict of interest also includes the use of assets of the procuring entity including human, financial and material assets, or the use of the office of the procuring entity or knowledge gained from official functions for private gain or to prejudice the position of someone the procuring entity or its personnel does not favour;
- (d) a conflict of interest may also arise in situations where the procuring entity or any of its personnel is seen to benefit directly or indirectly or allow a third party, including family, friends or someone they favour, to benefit directly or indirectly from the decision or action of the procurement entity.

**Examples:**

- (a) *An official/employ of PE involved in procurement process as member of the bid evaluation team. The participation of a close relative in the bidding process as bidder is considered as a situation for conflict of Interest as such official of PE may tempt to influence the decision in favour of such bidder.*
- (b) *The owners of the two different bidders participated in the bid process are identical. i.e. Mr. X holds more than 50% of the paid up equity share capital of both bidders Y & Z. As Mr X has access and influence on the content of both the bids, this can as well be considered as situation for conflict of interest*

**3.3** The situations in which bidders participating in a procurement process or their representatives may be considered to be in conflict of interest include, but are not limited to the following:-

- (a) if they or their personnel or representatives or agents have any relationship or financial or business transactions with any official of the procuring entity that are directly or indirectly involved in or related to the procurement process or execution of contract;
- (b) if they receive or have received any direct or indirect subsidy from any other bidder;
- (c) if they have the same legal representative, as any of the other bidders, for purposes of the bid;
- (d) if they have a relationship with each other, directly or through common third party that puts them in a position to have access to information about or influence on the bid of another;
- (e) if they participate in more than one bid in the same bidding process;
- (f) if they have controlling partners in common;
- (g) if a bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process or were involved in such preparation in any way.

- 3.4** In the qualification criteria and bidding forms, all bidders shall provide a signed statement that the bidder neither is associated nor has been associated directly or indirectly with the consultant or any other entity that has prepared the design, specifications and other documents for the subject matter of procurement or is being proposed as Project Manager for the contract.
- 3.5** (a) in case of a holding company having more than one independently manufacturing unit or more than one unit having common business ownership or management, only one unit shall be allowed to submit bid or quote to prevent any conflict of interest. Similar restrictions shall apply to closely related sister or subsidiary companies. Such bidders must proactively declare such sister or subsidiary company or common business or management units in similar lines of business.
- (b) in cases of agents quoting in offshore procurements on behalf of their principal manufacturers, one agent shall not represent two manufacturers or quote on their behalf in a particular bid enquiry to prevent any conflict of interest.
- 3.6** Any situation, where any personnel of a procuring entity is found to be in conflict of interest, shall be construed as breach of the code of integrity as specified under clause (1) of section 11 of the Act and Rule 12 of the Assam Public Procurement Rules. In such case, disciplinary action shall be initiated as per the relevant service rules applicable to the personnel concerned.
- 3.7** Any situation, where a bidder is found to be in conflict of interest, shall be construed as breach of the code of integrity as specified under clause (v) of Sub-section (2) of Section 11 of the Act and shall be treated in the manner prescribed under Sub-section (3) of the Section 11 of the Act.

## **4. Code of Integrity**

### **4.1 Fundamental Principles of Public Procurement:**

- 4.1.1 The procuring entity shall have the responsibility and accountability to ensure compliance with the code of integrity in the public procurement as laid down by the State Government under Section 11 of the Act by its officials and employees or by a person participating in a procurement process. (Refer Sec 4(1) (d)).

### **4.2 Rule 12 of APP Rules 2020 (Code of Integrity)**

- 4.2.1 The procuring entity and all officers or employees of the procuring entity, whether involved in the procurement process or otherwise or other persons involved, directly or indirectly, in any way in a procurement process, shall maintain an unimpeachable standard of integrity both inside and outside their office as prescribed under sub-sections and (2) of section 11 of the Act, Central Civil Services (Conduct) Rules, 1964, All India Services (Conduct) Rules, 1968 or the Assam Civil Service (Conduct) Rules, 1965 or the relevant conduct rules by whatever name called or any other law or code as applicable to them and also shall:-
- (i) act strictly in accordance with the provisions of the Act, the Rules or instructions and guidelines issued under the Act and the Rules;
  - (ii) not allow and prevent any bidder to have access to information on a particular procurement, before such information is available to the public at large;
  - (iii) not use or include unnecessarily restrictive or “tailored” specifications, terms

of reference, statements of work, limitations or terms and conditions that may discourage wide competition or unnecessarily exclude certain categories of prospective bidders from participation;

- (iv) not solicit or accept any bribe, reward, gift or any material benefit or solicit promise of any future employment, whether direct or indirect, from anyone who has sought or is seeking or likely to seek procurement from the procuring entity or, correspondingly, offer or give bribe, reward, gift or any material benefit or promise any future employment to any procuring entity from whom procurement is sought or is being sought or is likely to be sought;
- (v) not have a financial interest in any bidder responding to a bidding process of the procuring entity and any such person having financial or other interest in any bidder shall not participate or be involved in that procurement process in any way;
- (vi) not disclose proprietary and source selection information, directly or indirectly, to any person other than a person authorised to receive such information;
- (vii) treat all bidders in a fair and equitable manner in line with the principle of fairness, integrity and transparency in the procurement process;
- (viii) provide all bidders identical information together, that is, at the same time, during the bidding process;
- (ix) apply the same criteria of evaluation as specified in the bidding documents, bidder registration documents or pre-qualification documents and under no circumstances introduce or apply new evaluation criteria during the evaluation process;
- (x) not entertain any favour, recreation, presents, services, etc. from the bidders or prospective bidders;
- (xi) protect the interests of the procuring entity and the State Government under all circumstances while dealing with information and information sources;
- (xii) maintain the confidentiality of all bids;
- (xiii) ensure that the selection of bidder is as per the bidding documents and is not influenced by personal or private reasons attributable to the officials in any manner;
- (xiv) disclose conflict of interest, if any forthwith; and
- (xv) not to act in contravention of the code of integrity laid down in section 11 of the Act and prescribed herein.

4.2.2 The bidders and their representatives or consultants or service providers participating in a procurement process shall maintain an unimpeachable standard of integrity as prescribed under Section 11(2) of the Act, failing which the procuring entity or the State Government may take appropriate measures as prescribed under Section 11(3) of the Act.

#### 4.3 **Section 11 of APP Act 2017 (Code of Integrity)**

4.3.1 No officer or employee of a procuring entity or a person participating in a procurement



process shall act in contravention of the code of integrity prescribed by the State Government.

4.3.2 The code of integrity referred to in sub-section (1) shall include provisions for prohibiting:

- (i) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;
- (ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;
- (iii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;
- (iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;
- (v) any financial or business transactions between the bidder and any officer or employee of the procuring entity, who are directly or indirectly related to tender or execution process of contract;
- (vi) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;
- (vii) any obstruction of any investigation or audit of a procurement process;
- (viii) making false declaration or providing false information for participation in:
  - a) tender process or to secure a contract;
  - b) disclosure of conflict of interest;
  - c) disclosure by the bidder of any previous transgressions with any entity in India or any other country during the last three years or of any debarment by any other procuring entity.

4.3.3 Without prejudice to the provisions of Chapter IV (Offenses & Penalties) of the Act, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity after giving a reasonable opportunity of being heard, may take appropriate measures including:

- (i) exclusion of the bidder from the procurement process;
- (ii) calling off of pre-contract negotiations and forfeiture or encashment of bid security;
- (iii) forfeiture or encashment of any other security or bond relating to the procurement;
- (iv) recovery of payments made by the procuring entity along with interest thereon at bank rate;
- (v) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;

- (vi) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 46 of the Act.

## **5. Offences & Penalties**

### **5.1 Punishment for taking gratification or valuable thing in respect of public procurement (Section -41 of the Act):**

- 5.1.1 Whoever, being an officer or employee of the procuring entity acting in connection with any procurement process, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

### **5.2 Interference with Procurement Process (Sec 42 of the Act):**

- 5.2.1 Interference in the public procurement process is a punishable offence under Sec 42 of the APP Act. 2017 and whoever is found guilty shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, whichever is less.
- 5.2.2 Following are the acts which shall be considered as interference with Procurement Process for the purpose of this section:
  - a) interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or
  - b) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or
  - c) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition; or
  - d) intentionally influences any procuring entity or any officer or employee thereof or wilfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement process; or
  - e) engages a former officer or employee of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former officer or employee was associated with a procurement in which the employer had an interest; or
  - f) engages in any form of bid-rigging, collusive bidding or anti-competitive behaviour in the procurement process; or
  - g) intentionally breaches confidentiality referred to in section 49 for any undue gain.

- 5.2.3 In addition to the recourse available in the bidding documents or the contract, the bidder shall be punished with fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, if it
- a) withdraws from the procurement process after opening of financial bids; or
  - b) withdraws from the procurement process after being declared the successful bidder; or
  - c) fails to enter into procurement contract after being declared the successful bidder; or
  - d) fails to provide performance security or any other document or security required in terms of the bidding documents after being declared the successful bidder, without valid grounds,.

### 5.3 Vexatious Appeals or Complaints (Section 43 of the APP Act, 2017)

Whoever intentionally files any vexatious, frivolous, or malicious appeal or complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punished with fine which may extend to twenty lakh rupees or five per cent of the value of procurement, whichever is less.

## 6. Risk Areas in Public Procurement Process

### 6.1 There are risk areas in different stages of the procurement process being carried out by any procuring entity which includes:

- a) Need assessment
- b) Development of specifications
- c) Development of procurement plan
- d) Bidding process
- e) Evaluation of bids
- f) Contract execution
- g) Consultancy services

### 6.2 Need Assessment:

There is always a risk of not taking the decision according to policy rationale or existing need but the desire to channelise benefits to an individual or an organisation e.g. artificial creation of demand that is not needed but simply to benefit the supplier.

### 6.3 Development of Specifications:

This may be to channel benefits to an individual or an organization. The probable risk involved are described as below:

- a) Specifications and terms of reference are made to favour a special supplier or contractor and not to properly address the need identified. Rule 12(1)(iii) refers to unnecessarily restrictive or “tailored” specifications, terms of reference, statements of work, limitations or terms and conditions that may discourage wide
- b) competition or unnecessarily exclude certain categories of prospective bidders from participation.

- c) Specifications involving samples: Procurements where samples are asked to be submitted along with the offer and the evaluation is based on the subjective evaluation of samples. If required, the provision for submission of an advance sample by successful bidder(s) may be stipulated for indeterminable parameters such as, shade/tone, size, make-up, feel, finish and workmanship, before giving clearance for bulk production of the supply. Sub-rule 4 of Rule 15- Criteria for Evaluation: provides that trials or sample testing, if chosen, when considered actually necessary, shall be done, in an open and transparent manner in the presence of and in association with the different bidders who shall be given the opportunity to point out any of the technical issues involved therein. Failed bidders shall be provided reports indicating values of the various parameters obtained in trials or testing.

#### 6.4 Development of Procurement Plan:

The risks involved at this stage are as given below:

- a) **Packaging or bundling** of requirement during the procurement plans stage by deciding on clubbing or splitting of requirements of various field units to avoid open competition or reduce competition
- b) **Exceptions to an open bidding** are abused, leading to less competitive or single source processes
- c) **Evaluation criteria** are not set from the beginning or are not objective, thereby making them prone to abuse

#### 6.5 Bidding Process:

Following are the risk areas at this stage

- a) **Invitation to Bids** could be the lack of publicity for open bidding thereby restricting the bidders that participate
- b) **When short lists are used** firms may bribe to get included in the short-lists
- c) **Less time to Bid**, invitation to bid is published with little time given to bidders, the aim is to make it difficult for the bidders without prior knowledge to present bids.
- d) **Abuse of confidentiality** lack of publicity denies a level playing field to all bidders.
- e) **In single source process**, there could be the lack of publicity or transparency, leading to unjustifiable decisions.
- f) **Bidders or contractors collude** to eliminate/ reduce competition or manipulate the bidding process to influence prices or to share the market by artificially losing bids, or not presenting offers.

#### 6.6 Evaluation of Bids:

Risks involved at this stage are given as below:

- a) The risk of not stating explicit evaluation criteria thereby, leading non-transparent decisions.
- b) Subjective evaluation may give scope to manipulation and biased assessments.
- c) **Independence and neutrality of TC members:** The Tender Committee should give an undertaking at the appropriate time that none of them has any personal interest in the

companies/ agencies participating in the tender process. Any member having interest in any company should disclose the 'conflict of interest' situation and refrain from participating in the Tender Committee.

- d) **Pre-qualification criteria:** Pre-qualification bidding has the potential of getting misused or being applied without considering the restrictive nature of competition. Pre-qualification criteria should be relevant to the capacity and quality requirements and should neither be very stringent nor very lax to restrict/facilitate the entry of bidders. These criteria should be clear, unambiguous, exhaustive and yet specific. In addition, there should be fair competition.
- e) **Involvement of agents in international bidding:** Procurement should preferably be made directly from the manufacturers. Either the agent on behalf of the foreign principal or the foreign principal itself can directly bid in a tender, but not both. Further, an agent participating in a tender on behalf of one manufacturer, should not be allowed to also quote on behalf of another manufacturer in the same tender.
- f) **Tender negotiations:** Normally, there should be no post-tender negotiations. In certain exceptional situations as per provisions of the Act and the Rules, for example, procurement of proprietary items; items with limited sources of supply and items where there is suspicion of a cartel formation; negotiations may be held with L-1. In the case of L-1 backing out, there should be re-tendering.
- g) **Contract awards** are not publicised

#### 6.7 Contract Execution:

The risks involved at this stage are as below:

- a) **Advance payments:** The terms of such advances should be expressly stated in the NIT/Bid documents. Advance should be progressively adjusted against bills cleared for payment as per the terms & conditions included in the contract.
- b) **Contract changes and re-negotiations** after the award are of a nature that changes the substance of the contract itself
- c) **Supervising** agencies/individuals are unduly influenced to alter the contents of their reports; so that changes in quality, performance, equipment and characteristics go unnoticed
- d) **The contractor's claims** could be false or inaccurate and protected by those in-charge of revising them
- e) **Subcontractors** and partners, chosen in a non-transparent way, are unaccountable or are used to channelise bribes

#### 6.8 Risks in Anti-Competitive Practices:

Anti-competitive practices like bid rigging, collusion or cartels occurring when bidders, who would otherwise be expected to compete, secretly conspire to frustrate the buyer's attempts to get value-for-money in a bidding process. Anti-competitive conspiracies can take many forms. These strategies may result in patterns that procurement officials can detect. Therefore, steps can be taken to thwart such attempts. The Anti-competitive practices include:

- a) **Bid-Coordination** - the bidders collude and quote same or similar rates that are

much higher than the reasonable price. Their aim is to force the buyer to settle the procurement at exorbitant prices.

- b) **Cover Bidding** is designed to create an impression of genuine competition by making supporting bids for the leading bid-rigger.
- c) **Bid Suppression** means a company does not submit a bid for final consideration in support of the leading bid-rigger.
- d) **Bid rotation** is when conspiring firms bid, but they agree to take turns to be the winning bidder in a group of tenders of similar nature.
- e) **Market allocation** - competitors divide the market among themselves based on customers or geographical areas. They agree to let the nominated bidder for a particular customer or in a particular geographical area to be the winning bidder.

#### 6.9 Risk Management in Consultancy Services:

- a) The appointment of consultants should be absolutely need-based and only for specialised jobs.
- b) The selection of consultants should be made in a transparent manner through competitive bidding.
- c) The scope of work and the role of consultants should be clearly defined.
- d) There should be no major deviation in the scope of work after the contract is awarded. The role of the consultants should be advisory and recommendatory. The final authority and responsibility should be with the departmental officers only.
- e) The consultants/ firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment for the same project to avoid conflict of interest.



## BIDDING PROCEDURE

### Learning Outcomes

After studying this module, you will be able to

- Describe what are bidding documents
- Describe the contents of Standard Bidding Documents (SBD)
- Describe how a bidding document is prepared and published
- Describe the procedure for organising a Pre-Bid Conference
- Describe how bidding documents are amended
- Describe how Bids are prepared and submitted
- Describe procedure for receiving and opening of Bids
- Describe cancellation of bidding procedure
- Describe what is Bid Security

#### 8.1 What are Bidding Documents

A Bidding Document (BD), also called a Tender Document, is the most important communication between the buyer and the seller in a public procurement process. It is prepared by a procurement entity which intends to procure a subject matter of procurement from interested eligible parties in the market. It is used to convey information about the subject matter of procurement including the terms and conditions of procurement with the intention of getting maximum number of responsive bids.

The procurement process followed for consulting services are different from procurement of other subject matters of procurement. In case of consulting services first (Expression of Interest) EoI is issued to shortlisting of potential consultants. After the EoI process is complete, Request for Proposal (RfP) is issued inviting detailed proposal for final evaluation and selection. In essence, RfP or the Bidding Document, as the case may be, achieve a similar purpose.

Generally, a bidding document shall have following parts or sections:

Notice Inviting Bids;

- (a) Instructions to Bidders;
- (b) Bid Data Sheet;
- (c) Qualification and Evaluation Criteria;
- (d) Bidding Forms;
- (e) Conditions of Contract and Contract Forms;
- (f) Any other document or part that may be necessary.

*(Note: The Request for Proposals document will be discussed in the module on Consulting Services)*

Any bidding document should be complete by itself so that the bidders find all the information they need to prepare and submit their bids in the document itself. It should be written in a

clear and concise language without ambiguity so that the terms and conditions of the bidding document are easily understood by prospective bidders.

If information is communicated clearly more bidders will be encouraged to bid and the procurement entity will gain from better competition in the procurement process. A carefully prepared bidding document will greatly reduce the likelihood of misunderstanding, delays, complaints, and litigation in the future.

After preparation, approval of the competent authority is taken for the bidding document before the tender is floated. Bidders study the bidding documents and if they are able to supply the subject matter of procurement, prepare and submit their bid to the procurement entity.

The Bidding documents shall have following information:

- (a) instructions for preparing bids,
- (b) criteria and procedures that will be applied for judging qualifications of bidders,
- (c) documentary evidence and other information that must be submitted by bidders as proof of its qualifications, tax clearances, registrations etc,
- (d) detailed description of the subject matter of procurement, and any incidental services required to be performed like installation, commissioning, warranty, maintenance, training, the location where the goods are to be delivered, the work is to be executed or the services are to be provided and the required time-schedules thereof;
- (e) procedure for submission, opening and evaluation of bids;
- (f) whether bidders can bid for a portion of the quantity
- (g) the price of registration, pre- qualification, and bidding documents
- (h) place, deadline date and time for submission of bids
- (i) how can bidders seek clarifications regarding bids or subject matter of procurement
- (j) all commitments required to be made by the bidder beyond the procurement contract, such as commitments relating to the transfer of technology, know-how, maintenance or maintenance training, etc;
- (k) a reference to the right provided to appeal against an unlawful act or decision or procedure followed by the procuring entity in relation to the procurement proceedings.
- (l) a statement to the effect that the procuring entity reserves the right to cancel bid proceedings and reject all bids at any time.
- (m) formalities that shall be required to be completed once a bid has been accepted before a procurement contract or rate contract is entered into including, where applicable, that of execution of a written procurement contract or requirement of approval by a higher authority or the State Government;
- (n) Any other requirement laid down by the procuring entity in conformity with the Act and these rules relating to the preparation and submission of bids and other aspects of the procurement proceedings like detailed project report, concession agreement, design, plans, etc.

## 8.2 Standard Bidding Document

A Standard Bidding document (SBD) is a master document that serves as a reference and

an aid for building a Bidding Document. It is a template that can be customised as per the situation at hand. It is comprehensive, and it ensures that no important condition is missed while preparing a bidding document. A good SBD is a starting point for making good bidding documents.

An SBD is prepared by a team of experts in respective areas technical, financial, and legal, etc. SBDs are prepared separately for different subject matter of procurement like Goods, Works, Consulting Services, Non-Consulting services; and for different procurement method or process such as Open Competitive Bidding, Limited Bidding, Rate Contracting, Framework Agreement, etc. It is ensured that all terms and conditions required to make a good purchase are included in the SBD. After preparation, the SBDs are approved and notified by the State Government.

An SBD consists of different sections. Certain sections of the SBD are non-editable (fixed), while others are editable (variable) sections. Any modification in the non-editable sections is not allowed, while in the editable sections it is allowed. Certain clauses of the editable sections have blanks, which are filled at the time of preparing a bidding document.

The SBD must be selected as per the subject matter of procurement (e.g., if you need to procure furniture then you must choose the SBD applicable for goods). Then the procuring entity has to customise the SBD as per the nature of the subject matter of procurement by modifying and/or furnishing relevant information in the editable section only to make the bidding document ready.

**Different Sections of a SBD are:**

- (a) Notice Inviting Bids (NIB);
- (b) Instructions to Bidders (ITB);
- (c) Bid Data Sheet (BDS);
- (d) Eligibility, Qualification and Bid Evaluation Criteria;
- (e) Schedule of Requirements;
- (f) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- (g) Bidding Forms,
- (h) General Conditions of Contract (GCC);
- (i) Special Conditions of Contract (SCC);
- (j) Contract Forms
- (i) **Notice Inviting Bids (NIB):**

The NIB is an editable form that contains generic information used for inviting bids in Open Competitive Bidding, Two-stage bidding, Limited Bidding, Pre-Qualification or Registration of Bidders. It contains space for providing details of the subject matter of procurement in brief, which is sufficient for the bidder to decide whether to compete in the bidding process or not. It provides columns for information like

- name, address, and email of the procurement entity
- tender/Bid Reference number,

- brief description or Scope of the subject matter of procurement,
- total quantity being procured, consignees, etc (in case of Goods)
- the type of bidding process (single/double stage, single/two envelopes)
- availability of Bidding document and processing fee, if any.
- manner, place & deadline for submission of bids
- manner, place & date/time for opening of bids
- summary of conditions
- whether there is any reservation for a specific category of bidders
- price/ purchase preference if any
- any other relevant information

The NIB is given wide publicity to get the best possible response from the market.

(ii) **Instructions to Bidders (ITB):**

This non-editable (fixed) section contains the information necessary for bidders to prepare and submit a responsive bid. It shall primarily include information on bid preparation, bid submission, bid opening, bid evaluation and award of contract.

This section contains non-editable text, i.e., the text of this section should not be modified. Any modification or data required to be filled in must be provided in the Bid Data Sheet (BDS).

The ITB contains numbered clauses. It is read together with the clause of the same number of the Bid Data Sheet, which provides the missing information to complete the text, or additional information to supplement the ITB. The BDS is filled when the bidding document for a particular procurement is prepared.

*For example, if there is a clause numbered 22.1 in the ITB which contains text and reference to BDS, clause 22.1 of the BDS will represent/refer to the same clause. The text may be changed if needed, and data may be furnished as per the clause when a bidding document is being prepared from the SBD. Read together with BDS, the text of the ITB para will get completed.*

The main information provided in this section is:

- Scope of the procurement
- instructions for preparing bids
- Documents comprising the bid
- Bid Currency
- Documents showing conformity of the subject matter of procurement
- Documents establishing qualifications and eligibility of the bidder
- minimum requirement in respect of the technical, quality and performance characteristics that bids must meet to be considered responsive, and the criteria to be used by the procuring entity in evaluation of bids for determining the successful bid including any provision for preference due or any criteria other than price that shall be used indicating the relative weight of such criteria

- if alternatives to the characteristics of the goods, works or services, contractual terms and conditions or other requirements set forth in the bidding documents are permitted, a statement to that effect, and a description of the way alternative bids are to be evaluated,
- whether bidders are allowed to bid for a part of the tendered goods / works, and its details
- Documents showing tax clearances, registrations etc,
- Bid Validity period required
- Bid Security to be furnished, its amount and mode of payment/ submission
- Marking & manner of submission of Bids.
- Date, Place & Time for submission of bids
- Date, Place & Time for opening of bids
- procedure for withdrawal, modification, substitution of Bids,
- How to obtain Clarifications of bidding documents
- Bid Evaluation Criteria & Method
- Price/purchase preference which will be provided
- Performance Security to be furnished, (its percentage) and acceptable forms
- reference to the right provided to appeal against an unlawful act or decision or procedure followed by the procuring entity in relation to the procurement proceedings
- formalities to be completed for award of contract
- any other conditions relevant to the procurement

**(iii) Bid Data Sheet (BDS)**

In this section, the variable part of the ITB clause is specified. For example, the clause on due date (last date) for submission of Bids in the ITB may be:

*“22.1 Bids must be received by the Purchaser at the address (or submitted online in the eProcurement portal) no later than the date and time as **specified in the BDS.**”*

The bid submission deadline specified in the corresponding clause of the BDS will be:

“ITB 22.1 The due date for bid submission is:

Date: .....

Time: ..... “

The blanks will be filled when a bidding document for a particular procurement is being prepared.

In the same manner, all clauses of ITB which require specific data to complete them, are listed in the BDS showing the clause number of ITB and blanks for the specific data. These blanks are filled when a bidding document is being prepared.

If the text of any clause of the ITB needs to be modified, then without modifying (editing)

the ITB, a clause is placed in the BDS of the final bidding document which says, for example:

*“33.1 The existing clause may be read as ..... (the new text is entered here in the BDS which replaces the ITB text).”*

Here, 33.1 is the number of the clause of the ITB which was required to be modified. The new text *replaces* or *modifies* the ITB text.

If any specific clause of the ITB is not needed, then it can be deleted by placing a clause in the BDS of the bidding document like this:

*“33.1 DELETED “*

If a new clause is to be added to the ITB, then a new clause is added in the BDS of the bidding document like this:

*“33.2 ADD : [..... text of the new clause]”*

(iv) **Eligibility, Qualification & Bid Evaluation Criteria**

This editable section contains all the criteria and methods that the procuring entity will use to establish the eligibility & qualifications of the bidder and evaluate its bid. Apart from the criteria given here, no other criteria or method (whether relevant or not) is allowed to be used. The procurement entity does not have the authority to introduce any new condition at the time of bid evaluation. Bidders must submit documents to prove their eligibility and qualifications.

(1) **Eligibility criteria:** Eligibility Criteria for bidders are listed here. The bidder must submit documents to establish its eligibility to take part in the bidding process and be awarded the contract.

(2) **Qualification Criteria:** Qualification criteria are used to determine whether the bidder has the required technical and financial capacity/potential to execute the contract successfully, which shall include its past performance, experience, technical competence, infrastructure, quality control system, financial strength, manpower availability, compliance with environmental protection regulations/ environment management system, etc. Qualification of bidders can also be done prior to the calling for final bids, which is known as pre-qualification process. In general practice, the bidders are asked to submit their proof of eligibility and qualification along with the technical part of the bid. In the technical evaluation of the bid, the eligibility and qualification criteria as submitted are evaluated to ensure that the bidder qualifies for the bid.

(3) **Bid Evaluation Criteria:** This is the set of conditions used to compare eligible bids and determine the winning bidder.

This section can contain (optional) clauses for (a) Margin of preference, (b) Evaluation Criteria (c) Sample verification and demonstration

(a) **Margin of Preference:** In this sub-section, the method of giving a margin of preference to various types of bidders is specified. For example, price preference to goods manufactured by Micro & Small Enterprises, etc. If no preference is being given, this sub-section should be deleted before issuing the bidding document.

(b) **Evaluation Criteria:** In this sub-section, the criteria used to evaluate bids and



determine potential winners is specified. In the ordinary case, bids for goods & works are evaluated on a total- cost-to-the-purchaser basis. However, if any additional criteria are to be added to the bid evaluation, they must be specified in this sub-section.

*For example, instead of considering only the price as quoted towards the subject matter of procurement (say an IT installation), the procuring entity may take into consideration the cost of AMC/CMC for three years after warranty period and/or the cost of consumable (based on the average consumption) to arrive at the total lifecycle cost of the IT installation for the purpose of the evaluation.*

*Similarly, in case of procurement of highly technical goods, construction works or complex non-consulting services, the procuring entity may devise a system of scoring on different relevant attributes of the bidders objectively and specify the minimum qualifying marks.*

**(c) Sample Verification & Demonstration (Sec 14(2)):**

Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of the bid.

**(v) Schedule of Requirements**

This editable section has form(s) for the list of goods, related services, and the delivery schedule. The form for list of goods and delivery schedule usually has the following information:

- Schedule No.
- Description of item(s) and related services
- Quantity required and Unit of the item
- Final Destination (point of delivery)
- Earliest Delivery Date
- Last Delivery Date
- Bidder's offered delivery date

"Final Destination" means the place where the goods are to be finally delivered, and related services are to be performed. The Earliest Delivery Date and the Last Delivery Date are filled in by the procuring entity. The column Bidder's offered delivery date is filled in by the bidder before bid submission.

This section may also have a separate form for related services, where the service and the quantity/duration thereof can be specified. Related services may mean insurance, installation, training, and initial maintenance, etc.

In case the Schedule of Requirements has many schedules, it must be specified in the bidding document whether the comparison of bids will be done separately for each schedule, or for more than one schedules (grouped as a lot), or for all the schedules taken as one lot.

**(vi) Technical Specifications (TS)**

The purpose of this section is to give full technical details about the item being procured

to the bidder. Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the Procuring Entity’s 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. In public procurement, it is essential to give due consideration to Value for Money while writing the specification.

Technical specifications are prepared by the Technical Department, so if any changes are suggested by the bidder(s) in the pre-bid meeting or by written correspondence, approval of the technical department must be taken before incorporating the change. TS includes the following information, as applicable to the subject matter of procurement:

- Scope of supply, including usage
- Basic Specifications
- Drawings
- IS standards, ISI mark or other quality standard
- Characteristics that define quality, workmanship, machining standards, etc
- Characteristics that define the performance of the product
- Compliance to Environmental standards, pollution etc
- Sampling procedures
- Testing and Quality control procedures including any special tests to be done
- Packing and Labelling requirements
- Shelf life requirements
- Other services required to commission equipment
- requirement of after-sales service
- Warranty requirements

The TS forms a benchmark against which the specifications of the goods offered by the bidder are compared. Non-conformance to the technical specifications is a ground for rejection of the bid.

As far as possible, the technical specifications must specify National Standards or National Building codes. In their absence, relevant international standards may be used.

Technical Specifications should not be made too stringent, i.e., disproportionate to the need identified, as this will not only require greater expense but will also restrict competition artificially.

As per Assam Procurement Rule para 3(3), TS shall be so developed as to ensure value for money, a level playing field and wider competition in procurement, where applicable. To the extent possible, TS shall be:

- based on national technical regulations, recognised national standards, wherever such standards exist, or engineering, building codes and in their absence, be based on the relevant international standards
- shall emphasize sustainability criteria such as efficiency, optimum fuel or power

consumption, low maintenance cost and environment criteria such as reduced pollution, emission, noise levels, etc. and shall comply with applicable legal and statutory regulations.

**(vii) General Conditions of Contract (GCC)**

This non-editable section contains the information necessary for the procurement entity to prepare a draft contract that will be comprehensive, fair, and acceptable to both, the bidder and the purchaser. It ensures that the bidder is aware of the conditions which will be incorporated in the final contract.

The GCC contains numbered clauses and references to the clauses of the Special Conditions of Contract (SCC). A clause of the GCC is read together with the clause of the same number in the SCC, which provides the missing information to complete the text of the GCC. Some clauses of the SCC are filled when the bidding document for a particular procurement is prepared, while the remaining like rate, taxes & duties etc are filled when the actual contract is being issued.

The main information provided by this section is:

- Documents forming the contract
- Responsibility of Joint Venture partners
- Law governing the contract
- Scope of Supply
- Specifications and Standards to be met
- Delivery Schedule
- Documents to be submitted with supply
- Insurance of goods & works
- Inspection and Tests to be conducted
- Contract Price
- Payment Terms
- Taxes & Duties
- Performance Security
- Liquidated Damages
- Warranty conditions
- Rights of Purchaser, i.e. termination, inspection, etc
- Dispute Settlement procedure, like Arbitration, Conciliation, etc. Appointment of Arbitrators & Reconciliators

**(viii) Special Conditions of Contract (SCC)**

In this section, the editable part of the GCC clause is specified.

For example, the GCC clause for Liquidated damages may be written like his:

*"..... if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or*

*perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause “*

The corresponding clause in the SCC may be:

*“The liquidated damages shall be: 2% per week or part thereof.*

*The maximum amount of liquidated damages shall be: 10%”*

Just like the BDS, the SCC section can be used to Add, Modify or Delete any GCC Clause. Please read the text for BDS to see how these can be done.

**(ix) Standard Forms & Formats**

The Standard Bidding Documents may include a variety of standard formats, forms and templates which a bidder can modify and use. Besides being of convenience to the bidder, these forms ensure that the basic information is available for the bidders to fill in, and bids are not rejected on account of the missing basic information.

The forms and formats are divided in to following two categories.

**(a) Bidding Forms:**

- Letter of Bid, or Bid Form
- Bidder Information
- Joint Venture information
- Price Schedule(s) for submitting a price bid, according to the type of contract selected
- BG Format of Bid Security
- Form of Bid Securing Declaration
- Manufacturer’s Authorisation
- Certificate of Pharmaceutical Product (COPP certificate for Pharma goods)
- Format for Power of Attorney for the authorised signatory
- Format for Turnover Certificate by CA
- Format for disclosing experience
- Any other as may be required
- Checklist of the documents to be submitted as part of the technical bid.

**(b) Contracting Forms (Post Award):**

- Letter of Acceptance
- Contract Format
- BG format Performance Security
- BG format Advance Payment

(x) **Drawings**

In this section, the drawings for the goods / work are listed. Drawings may either be attached to the Bidding documents or be available for download. Drawings in physical form may be sold to the bidders.

(xi) **Documents to be submitted by the bidders**

This section contains the list of documents that must be submitted by bidders, mainly in the case of procurement of works.

### 8.3 Preparation of Bidding Documents

While the SBD are generic in nature, a Bidding Document is specific and pertains to a particular procurement. It is recommended that instead of preparing the bidding document from scratch, it should be prepared by adapting a standard bidding document (if available) as that ensures that all the important clauses are incorporated.

At the time of preparing the bidding documents for an open competitive bidding, an SBD is taken, and the relevant blanks provided in the BDS and SCC sections are filled in by the procurement entity with information pertaining to the particular procurement. For example, the clause for Deadline for Submission of Bids in the ITB may be:

*“22.1 Bids must be received by the Purchaser at the address and no later than the date and time **specified in the BDS.**”*

The bid submission deadline specified in the corresponding clause of the BDS, for a bidding document prepared for a particular procurement will be:

“ITB 22.1 The deadline for bid submission is:

Address:

**Room No 121, First Floor,**

**Office of the Chief Engineer (E), 21 Model Town, Kolkata**

Date: **15 June 2022**

Time: **04:30 P.M. IST”**

For Limited tenders, local purchases etc, a simpler single page format of bidding document may be used.

### 8.4 Availability of Bidding Documents

Bidding documents should be made available for download up to date of opening of bids and this should be clearly indicated in the documents.

The complete bidding document should be published both in the State Public Procurement portal (in not published eProcurement portal) and in the website of the procuring entity (or of the concerned department) and all intended bidders/parties should be allowed to download the bidding document at free of cost, to ensure a wider participation.

The bid processing fee (to be paid only by the bidder participating in the bidding process) should be fixed as prescribed by the Government of Assam vide notification from time to time.

Exemptions with respect to processing fee and/ or bid security may be granted to MSME units in the state as per the preference policy of the State Government.

## 8.5 Notice Inviting Bid

### (1) Open Competitive Bidding (OCB):

In the case of OCB bidding, the objective is to spread the information about the bidding to as many suppliers as possible so that there is the widest possible competition.

Notice Inviting Bid (NIB) should be sufficiently published both in the website and in the newspapers for ensuring maximum competition and indicating therein at least the type and subject matter of procurement in brief, the date and time for submission of bids and the addresses of the websites, etc. where details shall be available. The invitations for bids for more than one subject matter of procurement may be published in one notice.

As per the latest notification (Dated 27<sup>th</sup> January 2022) by the Government of Assam the minimum mode of publicity for procurement of Goods, Works and Non-consulting Services is as follows:

#### (a) If the estimated value of procurement is more than Rs 1.00 Cr

- Notice Board of the procuring entity and concerned subordinate Regional and Divisional Head Quarters, as the case may be, and
- Abridged version of one government approved big Vernacular Daily newspaper, and
- One all India daily newspaper of sufficiently wide circulation, and
- In e-Procurement Portal or State Public Procurement Portal

#### (b) If the estimated value of procurement is less than Rs 1.00 Cr

- Notice Board of the procuring entity and concerned subordinate Regional and Divisional Head Quarters, as the case may be, and
- Abridged version of one government approved major Vernacular and English daily newspaper for estimated value of procurement of INR 10 Lakhs or below, this provision is not applicable), and
- In the website of the Department or the Procuring entity, and
- In SPPP or eProcurement Portal (in case of online tender).

### (2) Limited Bidding:

In the case of Limited Bidding the bids are called only from the selected list of firms. In case of Limited Bidding, the procuring entity shall issue an invitation to bid by writing directly, and on the same day, to

- All the bidders who can supply the subject matter of procurement, or
- Who are registered for the subject matter of procurement with the procuring entity or with any other procuring entity, where the procuring entity use the list of registered bidders of such other procuring entity, or
- An adequate number of bidders who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition,

The bid invitation notice should simultaneously be uploaded on the SPP portal.



(3) **Single Source Bidding:**

Bids are invited from a single perspective bidder. Invitation to bid is placed on the State Public Procurement Portal simultaneously. The procuring entity may engage in negotiations in good faith with the single bidder for obtaining a more advantageous deal only after submission of bid.

(4) **Documentation:**

Printouts of the bidding documents, NIB etc published on the website and newspapers must be taken and preserved on the procurement file as proof of the publicity made. The complete details of the dates, on which advertisements appeared on the website, should be indicated while sending cases to higher authorities.

## 8.6 Pre-bid Conference

(1) **Clarifications:**

As per the public procurement norms any prospective bidder/ bidder can seek clarifications from the procuring entity in writing about the bidding documents. The time frame for seeking clarifications and for responding to them are to be laid down in the bidding document. The time frame is provided so that there are no cases of bidders asking for clarifications just before the deadline for submission of bids. The clarifications sought and the replies/clarifications given by the procuring entity are published on the SPPP/eProcurement Portal to be accessed by all prospective bidders.

(2) **Pre-Bid Conference:**

In addition to accepting and responding to queries or clarifications sought by the prospective bidders, one or more rounds of a pre-bid conference (or meeting) can also be held by the procurement entity in deserving cases. This conference is a forum where the procuring entity's representatives and the prospective bidders discuss the different aspects of the procurement. The procurement entity can clarify issues or doubts, if any, about the specifications, technical or commercial details of the work, related services, plant, equipment and machinery specified in the bidding document. Pre-bid conferences are held for procurement of:

- Turn-key contracts
- facilities of special nature
- sophisticated & costly equipment
- large works
- High value items
- large or complex non-consulting assignments
- or in any other case, if felt necessary

In the Pre-bid conference, the bidders/prospective bidders discuss the technical and contractual components of the subject matter of procurement they intend to bid for. This is an opportunity for the bidders to get their doubts clarified in a face-to-face meeting, and to suggest improvements in the subject matter of procurement. However, it should be noted that any statement made by any party at the pre-bid conference will not be effective unless such statement is specifically confirmed in

writing by a minutes of meeting or an amendment of the bidding document issued by the procurement entity. Any change in the techno-commercial requirements should be formalised by issuing a formal corrigendum along with the minutes of meeting.

It is important that this conference is attended by knowledgeable persons from both parties, i.e., the bidder and purchaser. From the purchaser's side, it is best that the persons who developed the technical specifications, drawings, scope of work, terms of reference should attend. The bidder should send technically competent persons who can raise the queries properly and can discuss the relevant technical matters in detail. They should also send person(s) well-versed in contractual matters, if any contractual issues are to be discussed.

If technical/contractual matters are not clarified, there is a risk for both, the bidders not submitting a responsive bid, and the purchasers not getting the desired bids for the subject matter of procurement.

For bidders, attending the pre-bid meeting/conference is not mandatory.

The Date, Time and Place of the Pre-bid Conference should be declared in the Bidding Document. It should be scheduled after the issue of the bid document, but prior to the bid submission deadline, such that likely bidders get time to study the bidding document, but still have enough time to prepare their bid.

If a site visit is planned, say in the case of OCB for complex works, it must be scheduled prior to the pre-bid meeting.

After the site visit and/or pre-bid conference, a consolidated minutes of the visit and/or conference is issued, wherein the text of the queries raised, and clarifications given are listed, without disclosing the source of the query. Queries received by post/ email are also replied therein. Copy of the minutes of the meeting and response or clarifications to the queries raised in writing are published in the eProcurement Portal or SPP portal for the knowledge/information of all the intended bidders including those participated in the pre- bid conference.

Sometimes, sue moto or because of the outcome of the pre-bid conference the Procuring entity may feel it necessary to amend the techno-commercial conditions by issuing corrigendum. In such situation, the procuring entity should ensure that the bidders get sufficient time, post issue of the corrigendum, for preparation and submission of bid. If the time gap between the due date of submission of the bid and issue of the corrigendum is inadequate for preparation and submission of the bid, the procuring entity may have to extend the due date for submission through the corrigendum.

### **8.7 Modification of Bidding Documents**

The procurement entity can modify the bidding documents at any time before the date for submission of bids. Modifications may be necessitated because of a change in departmental or project requirements, query raised by a prospective bidder, observations during a site visit, or because of discussions in the pre-bid conference.

If the modification materially affects the terms of the bidding document, then it should be published in the same way as the publishing of the initial bidding documents. The modification is notified in writing by placing it on the SPP portal and e-Procurement Portal. It is responsibility

of the intended/prospective bidders to check/verify the e-procurement portal and SPPP on regular interval for any modification or corrigendum to the bidding document.

If the modification alters the terms and conditions substantially, additional time is given to the bidders to submit their proposal accommodating the changes, by postponing the deadline for bid submission.

If any bidder has already submitted his bid before the issue of the modification to the bidding documents, he is allowed to submit a “Modification” to his submitted bid, or to replace his submitted bid with a new one by submitting a “Substitution” bid. In such a case, the bid last submitted by him will only be considered for evaluation. If the bidder is unable to supply as per the revised requirements, he can also submit a “Withdrawal” and withdraw his bid. However, modification / substitution / withdrawal must be submitted before the expiry of the deadline for submission of bids.

## 8.8 Preparation and Submission of Bids.

### (1) Online & Offline Bid

- (i) Bid can be submitted either in online mode or offline mode. In case of online mode, the soft copies (in .pdf or .xls format) of the bid are uploaded in the e-Procurement Portal. However, in case of offline or manual bidding the bids are submitted in hard copies in the manner prescribed in the bidding document.
- (ii) The bidding documents specify in how many envelopes must the bid be submitted and the number of copies of the bid to be submitted by the bidders **in case of physical submission of bids**. The Techno-commercial bid contains all the technical, commercial and contractual aspects of the bid like specifications, drawing, inspection, delivery terms, etc, while the Financial bid contains rate, quantity, BOQ, taxes, duties, discounts, etc. The Techno- commercial bid, Financial bid, Bid Security (where applicable) and other required documents together make a “bid”.
- (iii) The Procuring Entity shall be mentioned in the bidding document whether the bid must be submitted following **single envelop system or double envelop system**.

### (2) Single & Two Envelop System

A procuring entity may choose to invite bids in single envelop or two envelopes, as specified under in section13 of the Act, depending on the content, nature, or type of the subject matter of procurement or the availability of the appropriate design or the appropriate and most suitable technical specifications or technical capacity to define the qualitative standards and technical specifications for the subject matter of procurement. The procedure and basis for so choosing shall be as prescribed herein below:-

- (i) The single envelop system shall be adopted by procuring entities where the subject matter of procurement is well defined with clearly set qualitative standards and technical specifications that are not complex in nature.
- (ii) The two envelop system shall be adopted by the procurement entities in cases where the qualitative standards of the subject matter of procurement are not clearly set or the technical specifications and requirements for it are complex or

where, in particular cases, the most appropriate design or technology at the best price is not available with the procuring entity.

- (iii) In case of single envelop bids, the lowest responsive priced bid that meets the eligibility criteria as well as the technical and commercial requirements laid down in the bid documents shall be the successful bid.
- (iv) In case of two envelop bids, bid security shall be submitted in or along with the first envelope containing the technical bid. The technical bids shall be opened first and evaluated. The Bid Evaluation Committee shall not be allowed access to the financial bids by the procuring entity which shall ensure the integrity and safe-keeping of the sealed financial bids till the completion of evaluation of technical bids.
- (v) The evaluation of technical bids, in case of two envelop bids, shall be based solely on the criteria as specified in the bid documents and these shall not be waived even in cases where none of the bidders meet such criteria. If none of the bids are technically acceptable or none meet the criteria, the procurement process shall be cancelled and fresh bids invited without opening the financial bids. After completion of the technical evaluation, the financial bids of only the technically accepted bids shall be opened and evaluated. The lowest priced most advantageous bid among the technically accepted bids shall be the successful bid.

**(3) Submission of Bid**

- (i) **Single Envelope System:** In a single envelope system, the “Bid” (i.e., the Techno-commercial bids, Financial bids, Bid Security & other documents) are submitted in a single sealed envelope.
- (ii) **Two Envelope System:** In a two-envelope bidding process, bidders are asked to submit their bid in two envelopes. The Techno-commercial bid, Bid Security, other documents are sealed in one envelope, and the Financial bid is sealed in another envelope. Both the envelopes are then sealed in a third outer envelope. It is ensured by the bidder that no financial information is placed in the envelope containing the Techno-Commercial bid.
- (iii) **Marking:** The envelope containing the Technical bid is marked “TECHNO-COMMERCIAL BID for Tender No ... Due on dd/mm/yyyy”, while the envelope containing the Financial bid is marked “FINANCIAL BID for Tender No ... due on dd/mm/yyyy” so that their contents can be distinguished easily and there is no mistake made while opening them. Further, the sentence “NOT TO BE OPENED” before..... (due date & time of tender opening) are also to be put on all the envelopes.
- (iv) The inner and outer envelopes shall bear the:
  - (a) name and complete address along with mobile telephone number and email address of the bidder;
  - (b) complete postal address of the procuring entity;
  - (c) specific identification mark (Tender Number) or code and any additional

identification marks as specified in the bidding documents;

- (d) a warning not to be opened before the time and date fixed for the opening of bids as indicated in the bidding documents;
- (e) If all envelopes are not sealed and marked as required, the procuring entity shall assume no responsibility for its consequences.
- (f) similar procedure for sealing, marking and submission of bids shall be adopted for Technical and Financial bids, if two envelop bids are invited.
- (v) *Copies:* If the bidding document requires bidders to submit their bid in original plus one or more copies, then the bidder should submit the specified number of copies, marking the outer and inner envelopes as "ORIGINAL" and "COPY-1", "COPY-2" and so on, in addition to the other markings. The original and all copies must be sealed in one single outer envelope.

Both, the Original and all copies of the bid must be typed with all pages signed by the bidder, or by a person duly authorised by the bidder to sign the bid on behalf of the bidder. The signature is a token of acceptance of the terms and conditions of the bidding documents. (Such authorisation letter should be attached with the technical proposal). In case there is a mismatch in the text between the original and the copies, then the text of the Original Bid will prevail and the copies will be ignored.

Multiple copies of the bid are generally required when the bids are examined by many departments, or there are several persons from different departments in the Bid Evaluation Committee.

- (vi) *Corrections of Bid:* Any corrections in the bid such as interlineations, erasures, or overwriting shall be valid only if they are duly signed or initialled by the person signing the bid.
- (vii) *Manual submission of Bid:* When physical bids have been called, bids may be submitted by the bidder
  - by post
  - by hand
  - by dropping them in the box specially earmarked for the purpose

Bids which are received by post are date and time-stamped by the procurement entity to establish the date/time of their receipt. They are then deposited in the relevant bid box. If the bid is late, it is dealt as per the procedure for late bids.

- (viii) *Online submission of Bid:* In the case of e-procurement, bids must be prepared in the formats provided in the bidding documents. If these are not available, then bids must be prepared in the formats provided on the e-procurement portal. Any documents required to be submitted must be scanned and uploaded with the formats. Bids must be signed digitally using digital signatures and uploaded electronically.

- (ix) In this procedure there is no question of sealing, marking, or asking for copies of the bid. Bids are submitted electronically according to the procedure specified on the State Public Procurement Portal or e-procurement portal. After bid opening, the procurement entity may download and print as many copies as required. The bidder is not required to submit any printed copies of the bid. The chances of there being interlineations, erasures, and overwriting in the bid are low, except in the documents which were scanned and uploaded by the bidder.

### 8.9 Deadline for submission of Bids

The deadline for submission for bids is specified in the bidding documents. Deadline means the last date and time of the day by which a bidder must submit his bid. For example, a bid submission deadline may be specified as:

*“ITB 16.2 The last date and time for submission of bids is:*

*Date: 20 June 2022*

*Time: 04:30 p.m. IST”*

(IST is Indian Standard Time)

When the deadline has been crossed, the procurement entity will seal the bid box so that no bid can be deposited thereafter. Bidders are expected to deposit their bids well before the deadline so that they don't face obstacles like traffic jams, lift failure etc on the last day that prevents them from submitting their bid before the deadline. The e-procurement software will stop bidders from submitting their bids.

The deadline may be extended by the procurement entity if:

- only a few bids have been received, and more bids are likely to be received if the deadline is extended, or,
- based on a clarification given to bidders, or discussions in the pre-bid conference substantial modifications had to be made in the bidding document and time needs to be given to the bidders to account for the changes when preparing their bid.

In case the bid submission deadline has been extended by the procurement entity by issuing a corrigendum/addendum, the following actions must be taken:

- procurement entity must reconfirm that reasonable time is available to the bidder for preparing a modified bid,
- the corrigendum/addendum must be published in the same manner as the NIT.

In case the last date for submission of bids falls on a holiday, or a weekend, or is declared a public holiday by the State Govt, then the last date of submission of bids will be the next working day.

### 8.10 Receiving Bids

(1) **Manual System: In a manual bidding system, the process for receiving bids is:**

- the procurement entity places a locked bid box in the designated location for each day of bid opening. The box has two locks. Keys to one lock are in the custody of the officer authorised to receive the bids, and the keys to the other lock remain



with the procuring entity. The box has a slot for dropping bids. Usually there may be separate locked boxes for each day of bid opening and type of bids. The date of opening and type of bids is marked on the box,

- bidders deposit their bids (all the copies) in the box marked for the deadline date,
  - bids received by post/ courier are deposited in the relevant bid box till the deadline for bid submission
  - bids can be received by hand. Acknowledgement for the same is given to the bidder by the officer authorised for receiving bids
  - Bids received by telex, fax or email are ignored and rejected (because only sealed bids are invited and accepted)
  - oversized bids which cannot be deposited in the bid box are received separately, acknowledged, time-stamped and stored in the custody of the bid receiving officer.
  - if any bid is received in torn or damaged condition by post or hand delivery, should be signed by the receiving officer and after taking the signature of the person delivering the bid, re-sealed if required. All such bids should be attested by the receiving officer.
  - All bids received by the officer authorised to receive bids on or before the date and time fixed for receipt of bids shall be entered in the Bids Receipt Register which shall be closed at the scheduled time and date after noting the total number of bids received up to the last time and date for submission of bids in words as well as figures and duly signed by that officer.
  - the slot on the bid box is sealed at the expiry of the deadline for submission of bids, and signed by two persons so that bids cannot be deposited (or removed) from the box after that,
  - The record of bids received late through post shall be marked as “Late” noting the time thereon and entered in the bids receipt register as such by such authorised officer after the closing of the register.
  - the box is opened by the Bid Opening Committee at the Bid Opening Time, and all the bids found are taken out and recorded.
- (2) Online System: In e-Procurement, the bidder uploads or enters details of his bid in different sections of the online form; which corresponds loosely to technical, documents, commercial and financial sections, depending upon the design of the website. The bid is signed digitally and submitted.
- (3) Late Bids: The officer authorised to receive the bids shall not receive any bid that is submitted personally by hand after the time and date fixed for submission of bids under any circumstances.
- Any bid which arrives by post after the deadline for submission of bids shall be declared and marked as “Late” and returned unopened to the bidder if the bidder so requests.
  - In the case of e-procurement, the system should not allow any bids to be uploaded after the expiry of the deadline for submission of bids.

### 8.11 Modification, Withdrawal and Substitution of Bids

Bids can be modified, substituted or withdrawn ONLY before the deadline for submission of bids.

Any modification, substitution or withdrawal request must be submitted separately in sealed envelopes which have been marked in a manner similar to the bids. In addition the words “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as applicable, must be written boldly on the envelopes.

In e-procurement, the bidder can edit, add or modify attachments as many times as he requires till the bid submission date and time. However, before the deadline, he must finalise his bid, sign it with his digital signature and submit it. Once submitted, the bid goes out of the control of the bidder. To modify his bid now, he must upload a “modification” to the bid. A Bidder can withdraw his bid at any time till the deadline for submission of bids without losing his Bid Security.

### 8.12 Period of Validity of Bid

1. Bids submitted by the bidders shall have to remain valid during the period specified in the bidding documents. This period should normally not be more than One Hundred and Eighty days, but depending on the nature of the procurement, a longer validity period may be specified in the bidding documents by the procurement entity if required. A bid valid for a shorter period than that which has been called for in the bidding documents shall be rejected by the procuring entity as non- responsive.
2. Prior to the expiry of the period of validity of bids, the procuring entity, in exceptional circumstances, may request the bidders to extend the bid validity period for a specified additional period of time. A bidder, by option, may refuse the request and such refusal shall be treated as withdrawal of bid but in such cases the bid security shall not be forfeited.
3. Bidders who agree to the extension of the period of validity of bids so requested for by the procurement entity shall also extend the period of validity of bid securities submitted by them or submit new bid securities to cover the extended period of validity of their bids. A bidder whose bid security is not extended or new bid securities not submitted shall be considered to have refused the request to extend the period of validity of its bid and rejected accordingly.

### 8.13 Bid Opening Procedure

#### (1) Manual Bidding

- (a) The important issue during bid opening is that the process must be done fairly. The procurement entity must ensure, and also show to the bidders that,
  - the bid box is in a sealed condition, and has not been tampered with,
  - submission of bids has not been allowed after the deadline,
  - bids have not been removed from the bid box.
  - bid envelopes are as deposited (in sealed condition), and have not been tampered with,

*In short, it must be demonstrated that the sanctity of the bidding process has been maintained.*

- (b) In a manual bidding system, the process of opening of bids is as follows:
- The date, time, and place of Bid Opening are specified in the bidding document. Bid Opening is done publicly, in the presence of bidders (or their representatives) who choose to attend and watch the proceedings.
  - The Bid Opening Committee (BOC) may co-opt officials for bid opening,
  - Only persons who carry a letter of authorisation from the bidders are allowed to attend the bid opening.
  - The BOC prepares a list of bidders or their representatives attending the opening of bids and obtain their signatures on the same. The list also contains, inter alia, the name, e-mail and mobile /telephone number of the representatives and the corresponding names and addresses of the bidders they represent. The authority letters brought by the representatives is attached to the list. The list is signed by all members of the Bid Opening Committee indicating the date and time of opening of the bids.
  - The BOC demonstrates the sealed condition of the bid box and takes the signatures of two representatives on the bid opening register, as verification that the box was found to be sealed before opening,
  - Thereafter the BOC opens the seals and locks of the bid box in the presence of the bidders' representatives, removes all the bids,
  - If any wrongly deposited bid is found in the box (say, for the next day's bid opening), it is deposited in the correct bid box after recording it and making an endorsement on it.
  - If a bid is found in the bid box whose date of bid opening has already passed (Late Bid), the bid is recorded, but returned unopened to the bidder, if the bidder so requests,
  - The remaining bids and the oversized bids are collected, sorted by tender number, and counted,
  - The bid envelopes are numbered as 'a/n', where 'a' denotes the serial number at which the bid envelop has been taken up for opening and 'n' denotes the total number of bids received by the specified time,
  - The BOC signs each envelope indicating the date and time as a verification of the fact that they were found sealed,
  - Before opening any envelope, the representatives are shown that the envelope is in sealed condition
  - Envelopes are usually opened tender by tender, meaning all bids of one tender are opened, then all bids for another tender, and so on
  - First, the envelopes marked "WITHDRAWAL" are opened. It is checked that a formal authorisation letter from the bidder for withdrawal of bid has been enclosed. If the authorisation letter is valid, the letter is read out and recorded, and the corresponding bid is not opened and returned to

the bidder. If the authorisation letter is not enclosed or is invalid, then the corresponding bid is opened and read out.

- Next the envelopes marked “SUBSTITUTION” are opened. It is checked that a formal authorisation letter from the bidder for substitution of bid has been enclosed. If the authorisation letter is valid, the letter is read out and recorded, the substitution bid is opened and read out, and the corresponding substituted bid is returned to the bidder unopened. If the authorisation letter is not enclosed or is invalid, then the corresponding originally submitted bid is opened and read out, and the substitution bid is ignored,.
  - Next the envelopes marked “MODIFICATION” are opened. It is checked that a formal authorisation letter from the bidder for substitution of bid has been enclosed. If the authorisation letter is valid, the letter is read out and recorded, the bid is opened and read out, with the modification(s) provided. If the authorisation letter is not enclosed or is invalid, then the corresponding originally submitted bid is opened and read out, and the “modification” is ignored.
  - Thereafter the other bids are opened.  
The following details are read out:
    - Name of the bidder, whether there is a substitution or modification
    - bid prices (lot-wise, if applicable)
    - discount, if any, and whether it is unconditional
    - bid security, whether deposited and its amount
    - any other details the BOC finds necessary
  - No clarifications need to be given at this stage to any bidder
  - The Bid Opening Committee shall prepare a record of the proceedings of the bid opening that shall, inter alia, include the name of the bidders and whether there is a withdrawal, substitution, or modification, the bid price, per lot, if applicable, any discounts and alternative offers if they were permitted, any conditions put by bidder and the proof of the payment of price of bidding documents, processing fee or user charges and bid security. The bidders or their representatives, who are present, shall sign the record. The omission of a bidder’s signature on the record shall not invalidate the contents and effect of the record. The members of the Committee shall also sign the record noting the date.
- (c) In case of manual bidding process after the bid opening has been completed the following is done:
- The first page of all the bids (opened for single envelope tenders, and technical bids of two-envelope bids) is initialled and dated by the BOC.
  - Each page of the price schedule, bill of quantities, is initialled and dated by the members of the BOC. Key information such as prices, delivery period,

etc. shall be encircled and unfilled spaces in the bids shall be marked and signed with date by the members of the Committee. 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

- The original and additional copies of the bid are marked in a similar manner,
- Alterations / additions / 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. 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”,
- If any samples have been received along with the bids, they should be initialled by BOC, numbered and kept secured separately.
- after completion of the bid opening and numbering/circling, a statement of bids opened showing the name of the bidder, rate, discount, other data read out, modifications, substitutions, withdrawals is prepared and signed by the BOC for each tender. This statement is given to the concerned official empowered to accept the tender or the convener of the BEC, as the case may be, along with the bids, under acknowledgment.

(2) **Online Bidding**

In the e-Procurement system the Opening of bids is carried out electronically according to the prescribed procedure. It will be dealt with in a separate module.

**8.14 Bid Security**

(1) **Amount, Form and Release**

- a) The amount of Bid Security to be deposited by bidders while submitting bids in a bidding process shall, generally, be between two to five percent of the estimated value of the procurement. The exact amount of bid security, rounded off to the nearest thousand rupees, as determined by the procuring entity shall be indicated in the bidding documents:

Provided that any concession in bid security deposit as may be notified by the State Government from time to time for encouraging local industries or small business, micro and small enterprises located in and operating from the State, recognised start-ups located in and operating from the State, individual bidders belonging to different reserved categories of the State, individual physically challenged bidders of appropriate levels of disability, and women entrepreneurs etc., shall be allowed accordingly on production of the relevant certificates from the competent authorities:

Provided further that the State Government may also notify upper limits on bid security amounts for procurements above Rs. 100 Crore.

- b) Bid security instrument or cash receipt of bid security or a bid securing declaration shall necessarily accompany the sealed bid submitted by the concerned bidders.
- c) The bid security of a bidder lying with the procuring entity in respect of other bids awaiting decision shall not be adjusted towards bid security for the fresh bids. The bid security originally deposited may be taken into consideration, in case bids are re- invited, if found valid.
- d) The bid security may be given in the form of Fixed Deposit Receipt or Term Deposit Receipt or Bank Guarantee, in specified format, from a scheduled bank or deposit through digital mode as specified in the Bidding Documents or in any form that may be specifically prescribed by the State Government by notification issued from time to time. The bid security shall remain valid for twenty eight days beyond the original or extended validity period of the bid.
- e) The bidding documents shall stipulate that the issuer and the confirmer, if any, of the Bid Security, as well as the form and terms of the Bid Security, acceptable to the procuring entity. In cases of International Competitive Bidding, the bidding documents may in addition, stipulate that the bid security shall be issued by a bank or Financial Institution acceptable to the procuring entity shall be confirmed by the corresponding bank of Financial Institution.
- f) Bank Guarantee presented as Bid Security shall be verified and confirmed from the concerned issuing bank. However, the confirmation of the acceptability of a proposed issuer or of any proposed confirmer does not preclude the procuring entity from rejecting the Bid Security on the ground that the issuer or the confirmer, as the case may be, has become insolvent or has otherwise ceased to be creditworthy or is implicated in any litigation the outcome of which may adversely affect his financial credibility.
- g) Prior to presenting a submission, a bidder may request the procuring entity to confirm the acceptability of a proposed issuer of a Bid Security or of a proposed confirmer. The procuring entity shall respond promptly to such a request.
- h) The Bid Security of unsuccessful bidders shall be refunded immediately after final acceptance of successful bid, signing of Agreement and deposit of performance security.
- i) The amount of bid security of a successful bidder may be adjusted with the amount of performance security required of him or refunded if the successful bidder furnishes the full amount of performance security.
- j) Notwithstanding anything contained herein above, the State Government may notify additional acceptable bid security instruments such as online EMD, e-Bank Guarantee etc. along with the corresponding procedures.
- k) The procuring entity shall release the bid security immediately and not later than five working days after :-
  - the expiry of validity of bid security;
  - the execution of agreement for procurement and performance security is furnished by the successful bidder;



- the cancellation of the procurement process; or
- the withdrawal of bid prior to the deadline for presenting bids, unless the bidding documents stipulate that no such withdrawal is permitted.

(2) **Forfeiture of Bid Security:**

The Bid security deposited by a bidder shall be forfeited in the following cases, namely:-

- (i) when the bidder withdraws or modifies its bid after opening of bids;
- (ii) when the bidder, after being selected for award of contract, does not deposit the required performance security within the specified period; and
- (iii) if the bidder breaches any provision of code of integrity prescribed for bidders specified in the Act and these rules.

**8.15 Bid Securing Declaration**

This is a signed declaration furnished by the bidder with his bid, instead of the Bid Security.

In exceptional cases, in place of a Bid Security, procuring entities after seeking approval of the competent authority may consider asking bidders to submit 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 bidding documents,

In case of any default by the bidder, the procuring entity shall suspended the defaulted bidder for a time period as specified in the bidding document from being eligible to participate in the bid/tender issued by the Procuring Entity.

**8.16 Cancellation of the Bidding Process**

(1) **The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below:**

- there is a major change in the description of the subject matter of procurement warranting a through modification of the Bidding document, or
- no bids have been received, or
- there is an un-rectifiable deficiency in the bidding process,
- none of the bids is found to be responsive
- none of the proposals qualify in the Technical Evaluation
- bid prices are found to be unreasonable as compared to updated estimates or available budget,
- 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.

- (2) As per Section 26 of the APP Act, 2017. procuring entity may cancel the bidding process initiated by it in the following situation:
  - (a) at any time prior to the acceptance of the successful bid,
  - (b) after the successful bid is accepted in accordance with sub-sections (4) and (5)
- (3) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals.
- (4) The decision of the procurement entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders who participated in the procurement process.
- (5) If the bidder whose bid has been accepted as the successful fails to sign any written procurement contract as required, or fails to provide any required security for performance of the contract, the procuring entity may cancel the procurement process after forfeiting the Bid Security provided by the bidder to State Government.
- (6) If a bidder is convicted of any offence under this Act, the procurement entity may,-
  - (a) cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;
  - (b) rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procurement entity and the convicted bidder.
- (7) The procurement process may be cancelled (and retendering done) only after submitting a proper justification and obtaining approval of the Competent Authority.

#### **8.17 Description of the Subject Matter of Procurement**

- (1) A subject matter of procurement can either be goods, works or Services. The subject matter of procurement must be well-described in clear and specific terms free from any ambiguity. It must be adequately described so that the bidder completely understands the requirement.
- (2) In the description of the subject matter of the procurement, the procuring entity shall specify the technical, qualitative and performance characteristics of the subject matter and include all specifications, standards, plans, drawings, designs, trials, sample testing and test methods, packaging, marking, labelling, conformity certification or symbols and terminology, etc. as necessary and applicable.
- (3) This description is used when preparing bidding documents, pre-qualification documents, or bidder registration documents.
- (4) As per Section 12 of APP Act, 2017 the description of the subject matter of procurement shall:
  - (a) be such as to meet the essential needs of the procuring entity.
  - (b) to the extent practicable, it must
    - be objective, functional, generic, and measurable,
    - set out the relevant technical, quality and performance characteristics,
    - Except in case of procurement from a single source, or a single contractor or a single service provider, use of brand names, catalogue number, trademarks, trade

names or any details that limit any material or items to specific manufacturer(s) shall be avoided and not be made. Where unavoidable, such item descriptions shall always be followed by the words “or substantially equivalent”.

- May be drawn up in accordance with the guidelines as may be prescribed.
- (c) Where applicable, the technical specifications shall, to the extent practicable, be based on national technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence, relevant international standards may be used.

#### **8.18 Time frame for submission of bids**

- (1) Sufficient and reasonable time must be given to the bidders to obtain the bidding documents, prepare and submit their bids. This time will depend on the type of tender, nature of the subject matter, and the department’s urgency for the subject matter of procurement. The time starts from the date the NIT is first advertised.
- (2) Time frame for submission of bids after the publication of the Notice Inviting Bids for procurement of goods/works/ services will be as per the Schedules which has been notified by the Finance Department, dated 27th January 2022.
- (3) In appropriate cases, the procuring entity may, with the approval of the Head of the concerned Administrative Department relax the period for submission of bids specified therein.
- (4) In case of International Competitive Bidding in which the bid notice to be addressed to international bidders, The Notice Inviting Bids shall additionally be published by using suitable media that attract international responses. This may include circulation of NIB to the Indian Embassies abroad, foreign Embassy in India, International Trade Journals, etc. The period of submission of bid from the date of first publication of NIB shall be 45 days in case of International Competitive Bidding.
- (5) In emergent conditions, the procuring entity may, after duly recording the reasons, grounds and nature of the emergency, reduce the period for submission of bids from the date of the last publication of Notice Inviting Bids, to not less than half of the period specified in the Schedules which shall be notified by the Finance Department subsequent to the notification of these rules.

#### **8.19 Role of Committees**

- (1) Every procuring entity shall constitute and notify one or more committees for the following purposes:
  - Preparation of bidding documents
  - Opening of Bids
  - Evaluation of Technical and Financial Bids
  - Monitoring of Contract
  - Spot Purchase
  - Purchase Committee for Competitive Negotiations
  - Any other purpose, as decided by the procurement entity.

- (2) Each such committee may have three or more members. In the case of e- procurement, the Bid opening committee may have a minimum of two members. As a common practice, the BOC consists of a member from the procurement entity and a member from the associated Finance.
- (3) The concerned Financial Advisor or the Finance and Accounts Officer or Senior-most Officer of the procuring entity dealing with finance as the case may serve as a member in all the Committees
- (4) The procuring entity may nominate a Technical Official having the relevant expertise as a member in any or all the Committees if deemed necessary.
- (5) The procuring entity may, with the prior approval of the concerned Administrative Department and after recording reasons thereof, engage a consultant having the requisite level of expertise as a subject matter specialist to assist any or all the Committees but such consultant shall not be part of the Committee or Committees. He can guide the committees but, as he is an outsider, he will not be a part of the committee and take part in decision- making.
- (6) In complex projects, the work of preparation of project report or bidding documents may be assigned to duly engaged consultants having the requisite level of expertise with the prior approval of the concerned Administrative Department.
- (7) The Administrative Department may direct the procuring entities to include an officer from the office of the next higher authority in any of these committees if so deemed necessary.

## 8.20 Buy Back

When it is decided with the approval of the competent authority to replace an existing old item with a new and better version on a 'buy back' or similar procedure the procuring entity may trade the existing old item while purchasing the new one provided the procuring entity shall incorporate a suitable clause for the purpose so that the prospective and interested bidders can formulate their bids accordingly. The procuring entity shall also decide the time as well as the mode of handing over the old item to the successful bidder depending on the value, type and condition of the old item to be traded and incorporate suitable provisions thereof in the bidding document. Further, a provision shall also be kept in the bidding document to enable the procuring entity either to trade or not to trade the item while purchasing the new one.

### Keywords

- **Bid:** A bid is a tender, proposal or quotation submitted in response to a bid invitation from a purchaser or procuring entity.
- **Bidding Document:** It is a document prepared by the purchaser (or procurement entity) used to convey information about the subject matter of procurement with the intention of getting responsive bids from suppliers.
- **Standard Bidding document (SBD):** This is a master document that serves as a reference and an aid for preparing a Bidding Document for a specific procurement.
- **Instructions to Bidders (ITB):** This non-editable (fixed) section of the bidding document contains the information necessary for bidders to prepare and submit a responsive bid. It also contains information on bid opening, evaluation and award of contract.

- **Bid Data Sheet (BDS):** This (editable) section of the bidding document contains clauses which add / modify/ delete the corresponding clause of the ITB.
- **Eligibility Criteria:** Criteria which a bidder must meet to establish his eligibility to take a government contract.
- **Qualification Criteria:** Criteria which establish the ability of the bidder to execute the contract, if awarded.
- **Pre-Qualification Criteria:** Criteria which the bidder must meet in order to be invited to submit a price quotation
- **Post-Qualification:** Criteria which a bidder must meet in order to establish his competence to execute the contract if awarded. These criteria are checked after the bids have been called and preliminary examination of bids has been done.
- **Evaluation Criteria:** the criteria used to evaluate bids and determine the winner.
- **Schedule of Requirements:** The section of the bidding document which specifies the list of goods, related services and the delivery schedule
- **Technical Specifications:** The section of the bidding document which gives full technical details about the item being procured to the bidder.
- **General Conditions of Contract (GCC):** The section of the bidding document lists the conditions which will be incorporated into the final contract.
- **Special Conditions of Contract (SCC):** This (editable) section of the bidding document contains clauses which add / modify/ delete the corresponding clause of the GCC.
- **Open Competitive Bidding:** Bids are invited from as many bidders as possible so that there is maximum competition,
- **Global Competitive Bidding:** Bids are invited from as many bidders as possible around the world, so that there is maximum international competition,
- **Limited Bidding:** Bids are invited from a limited number of bidders only
- **Single Source Bidding:** Bid is invited from one source only. It eliminates competition.
- **Pre-bid Conference:** A pre-bid conference (or meeting) held by the procurement entity in large or complex procurements.
- **Single Envelop Bids:** Technical bid and Financial bid are sealed in a single envelope for submission
- **Two Envelop Bids:** Technical bid and Financial bid are sealed in separate envelopes for submission
- **Single Stage Bidding:** Technical and Financial bid are invited in a single stage itself, and are evaluated together
- **Two Stage Bidding:** Technical and Financial bids are invited in two stages and are evaluated separately. Financial bids are invited from bidders whose technical bids are found to meet the requirements.
- **Bid Security:** Bid Security is a financial instrument provided by the bidder to the procurement entity along with his bid, which ensures that the bidder fulfils the obligations required by the bidding documents
- **Bid Securing Declaration:** This is a signed declaration submitted by the bidder with his bid,

instead of a Bid Security. It states that if the bidder withdraws or modifies his bid 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 bidding documents, they will be suspended for the period of time specified in the bidding document. During the period of suspension the bidder will not be allowed to participate in any procurement with the procurement entity.



## EVALUATION OF BIDS

### 1. Formation of Committees

**1.1 As per Section 24** of the Assam Public Procurement Act, 2017 ( APPA ), the procedure relating to submission, opening and evaluation of Bids and constitution of different committees for these purposes shall be as in accordance with the Rules made under the Act.

**1.2** The Rule 23 (1) of the Assam Public Procurement Rules, 2020 (APPR) prescribes for constitution of different committees for different purposes by the Procuring Entity to carry out the procurement process successfully. As per the Rule every Procuring Entity shall constitute and notify one or more Committees for the following purposes, namely:-

- (a) Preparation of bidding documents;
- (b) Opening of bids;
- (c) Evaluation of technical and financial bids;
- (d) Monitoring of contract;
- (e) Spot Purchase;
- (f) Purchase Committee for Competitive negotiations;
- (g) Any other purpose relating to procurement like preparation or evaluation of Detailed Project Report, etc. as may be decided by the procuring entity:

*Provided that no consultant or advisor, by whatever name called, shall be a member of any such Committee.*

**1.3** Each such Committee shall consist of three or more members, provided that, in cases of e-procurement, the Bid Opening Committee may have a minimum of two members.

**1.4** The concerned Financial Advisor or the Finance and Accounts Officer or Senior-most Officer of the procuring entity dealing with finance as the case may be a member in all the Committees.

**1.5** The procuring entity may nominate a Technical Official having the relevant expertise as a member in any or all the Committees, if deemed necessary.

**1.6** The procuring entity may, with the prior approval of the concerned Administrative Department and after recording reasons thereof, engage a consultant having the requisite level of expertise as a subject matter specialist to assist any or all the Committees but such consultant shall not be part of the Committee or Committees.

**1.7** In complex projects, the work of preparation of project report or bidding documents may be assigned to duly Engaged Consultants having the requisite level of expertise with the prior approval of the concerned Administrative Department.

**1.8** The Administrative Department may direct the procuring entities to include an officer from the office of the next higher authority in any of these committees, if so deemed necessary.

**1.9** All Committee members involved in the procurement process needs to submit a 'Disclosure for any conflict of interest' and dissociate himself or herself from the process in case the situation of conflict exist. **Section 11** of the Procurement Act relates to the Code of Integrity and **Sub-section (1) of Section 11** mentions that no officer or employee of a procuring entity or a person

participating in a procurement process shall act in contravention of the code of integrity. **Sub-section (2) (viii) (b) of Section 11** include provisions which prohibits making false declaration about disclosure of conflict of interest.

## 2. Evaluation of Bids

### 2.1 Criteria for Evaluation

- a) As per **Rule 12 Code of Integrity**, the Committee needs to apply the same criteria of evaluation as specified in the bidding documents, bidder registration documents or pre-qualification documents and under no circumstances introduce or apply new evaluation criteria during the evaluation process;
- b) In case of two envelop bids, bid security shall be submitted in or along with the first envelope containing the technical bid. The technical bids shall be opened first and evaluated. The Bid Evaluation Committee shall not be allowed access to the financial bids by the procuring entity which shall ensure the integrity and safe- keeping of the sealed financial bids till the completion of evaluation of technical bids.
- c) The evaluation of technical bids, in case of two envelop bids, shall be based solely on the criteria as specified in the bid documents and these shall not be waived even in cases where none of the bidders meet such criteria. If none of the bids are technically acceptable or none meet the criteria, the procurement process shall be cancelled and fresh bids invited without opening the financial bids. After completion of the technical evaluation, the financial bids of only the technically accepted bids shall be opened and evaluated. The lowest priced most advantageous bid among the technically accepted bids shall be the successful bid.

### 2.2 Process of Bid Evaluation

- a) The Process of bid evaluation comprises following steps:
  - Preliminary Examination and Responsiveness,
  - Scrutiny and Evaluation of Technical Bids; and
  - Scrutiny and Evaluation of Financial Bid of technically qualified bidders and combined evaluation, wherever applicable
  - Recommendations

### 2.3 Preliminary Examination & Responsiveness

2.3.1 As per **Rule 23(10)** of the APPR, the Bid Evaluation Committee constituted by the procuring entity shall conduct a preliminary scrutiny of the opened bids at the beginning to assess the prima-facie responsiveness and record its findings thereof particularly in respect of the following:-

- (a) that the bid is signed, as per the requirements listed in the bidding documents;
- (b) that the bid has been sealed as per instructions in the bidding documents;
- (c) that the bid is valid for the period, specified in the bidding documents;
- (d) that the bid is accompanied by due bid security;
- (e) that the bid is unconditional and that the bidder has agreed to give the required performance security; and
- (f) whether any other conditions specified in the bidding documents are fulfilled.

*Examples of such other conditions could be as under:*

- *Whether proof of payment of processing fee (if required) is given;*
- *In case the bidder is a JV, whether number of JV members is within the maximum number specified in the bidding document;*
- *Bidder not participating in more than one bid;*
- *In case of goods, the supplies originate from eligible countries as per the Government policy;*

*The above are not the only conditions and there could be similar other conditions once included in the bidding document need to be fulfilled and non-fulfilment would lead to the Bid to be declared as non-responsive after recording the same.*

#### **2.4 Determination of Responsiveness:**

2.4.1 The Bid Evaluation Committee shall determine the responsiveness of a bid to the bidding documents including the qualification and eligibility criteria as set out in the bidding document.

2.4.2 As per Rule 23(13) of the APPR, the Bid Evaluation Committee shall determine the responsiveness of a bid to the bidding documents. Bid shall be deemed to be responsive if it meets the requirements of the bidding documents without any material deviation, reservation, or omission where :-

- (a) “deviation” is a departure from the requirements specified in the bidding documents;
- (b) “reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding documents; and
- (c) “omission” is the failure to submit part or all of the information or documentation required in the bidding documents.

2.4.3 A “material deviation, reservation, or omission” is one that,

- (a) if accepted, shall :-
  - (i) effect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the bidding documents; or
  - (ii) limit in any substantial way, inconsistent with the bidding documents, the rights of the procuring entity or the obligation of the bidder under the proposed contract; or,
- (b) if rectified, shall unfairly affect the competitive position of other bidders presenting responsive bids.

2.4.4 The Bid Evaluation Committee shall examine the commercial and technical aspects of the bid in particular to confirm that all requirements of bidding document have been met without any material deviation, reservation or omission.

#### ***Examples for material deviation, reservation or omission:***

##### **A. Deviations:**

*Examples of major deviations includes:*

- *Failing to respond to specifications by offering instead a different design or product that does not offer substantial equivalence in critical performance*

*parameters or in other requirements*

- *Timelines for delivery, installation and commissioning or completion are not conforming to the tender terms.*
- *Offering a lesser warranty period or not committing to the required maintenance service during post warranty period.*

**B. Reservation:**

- *Taking exception to critical provisions such as applicable law, taxes and duties, and dispute resolution procedures etc.*

**C. Omissions:**

- *Missing pages in the original copy of the bid may be cause for rejection of the bid, as may contradictions in model numbers or other descriptions of critical supply items.*
- *Non submission of Manufacturers Authorisation Letter*

2.4.5 The procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents, or contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents, that is, there is no material deviation, or if it contains errors or oversights that can be corrected without any change in the substance of the bid.

2.4.6 Bids that are not responsive or contain any material deviation shall be rejected. Bids declared as unresponsive shall be excluded from any further evaluation and the unopened part bids of such unresponsive bids, if any, shall be returned to the concerned bidder.

**2.5 Clarification of Bids:**

2.5.1 **As per Rule 23(14)** of the Assam Public Procurement Rules the Evaluation Committee may seek clarification or additional information from any Bidder with respect to the bids submitted by it, to assist in the examination, evaluation, comparison and qualification of the bids, if felt necessary.

2.5.2 The clarifications, as sought by the Evaluation Committee from the bidder regarding the bid submitted by it, shall be in writing and which is to be submitted by a specific date. In case the bidder fails to comply with the request within the given time, the committee shall ascertain the responsiveness of the bids in absence of the information sought and may accordingly consider or reject the bid. Depending on the outcome, such bids shall be ignored or considered further. In case of e-procurement, clarifications shall be sought through the e-procurement portal only;

2.5.3 Any clarification submitted by a bidder that is not in response to a request by the Committee shall not be considered.

2.5.4 No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Committee in the evaluation of the financial bids.

2.5.5 No substantive change to qualification information or to a submission, including changes aimed at making an unqualified bidder, as qualified or an unresponsive submission, as responsive shall be sought, offered or permitted under any circumstances.

2.5.6 All communication made under this rule shall be included in the record of the procurement proceedings.

## 2.6 Immaterial Non-conformities in bids: (Rule 23(15))

2.6.1 The Bid Evaluation Committee may waive non-conformities in the bid that do not constitute a material deviation, reservation or omission and deem the bid to be responsive.

2.6.2 The Bid Evaluation Committee may request the bidder to submit necessary information or documents which are historical in nature like audited statements of accounts, tax clearance certificate, PAN, etc. within a reasonable period of time. In case the bidder fails to comply with the request within the given time, the committee shall ascertain the responsiveness of the bids in absence of the information sought and may accordingly consider or reject the bid.

2.6.3 The Bid Evaluation Committee may rectify immaterial non-conformities or omissions on the basis of the information or documentation received from the bidder.

## 2.7 Tabulation of Technical Bids (Rule 23 (11))

2.7.1 If Technical bids have been invited, these shall be tabulated by the Bid Evaluation Committee in the form of a comparative statement to evaluate the qualifications of the bidders against the criteria for qualification set out in the bidding documents. The comparative statement so prepared shall be signed by all members of the Committee.

The table shall include the following:-

- (a) Name and address of the bidder including e-mail address;
- (b) Reference of registration and empanelment, if any, with the procuring entity or other procuring entities;
- (c) Whether there is any substitution or modification of the original bid;
- (d) Whether the bidder fulfils the eligibility criteria given in the bidding documents;
- (e) Whether the bid has been signed by the bidder or an authorised person and, if signed by authorised person, whether valid document of authority is enclosed;
- (f) Whether proof of payment of price of bid documents is given;
- (g) Whether proof of payment of processing fee or user charges, if any, bid security or bid securing declaration are given;
- (h) Responses to the required qualification criteria and allotment of marks for them, or whether the minimum standards fixed for each criterion in the bidding documents are met in respect of the following:-
  - (i) availability of financial resources;
  - (ii) past performance and experience;
  - (iii) technical and professional competence including requirement of technical, professional, specialist personnel and availability of required machinery and equipment;
  - (iv) managerial resources and competence;
  - (v) whether proof or declaration has been given as required under section 7 of the Act;

- (vi) whether any other qualification criteria, fixed in terms of the provisions of section 7 of the Act, are met.
- (vii) The Result of evaluation of Technical bids, that is, whether qualified or not and, if not, the reasons thereof.
- (viii) The members of the Bid Evaluation Committee shall record their recommendations below the comparative statement table as to which of the bidders have been found to be qualified in evaluation of Technical bids and sign it indicating date.
- (ix) The format of the table given in clause (i) above, shall also be used, mutatis mutandis, for evaluation of proposals received in response to Registration of bidders, Empanelment of bidders, Request for Qualifications, Expression of Interest in the first stage of Two-stage bidding process. This format shall also be used, mutatis mutandis, for evaluation of Technical Bids in the second stage of the Two Stage bidding, if Technical bids have been invited separately.

## 2.8 Tabulation of Financial Bids (Rule 23(12))

2.8.1 After completion of the evaluation of Technical bids, the Financial bids of only those bidders who have been qualified in the technical evaluation shall be opened and tabulated by the Bid Evaluation Committee in the form of a comparative statement to evaluate the lowest or most advantageous bid on the basis of the evaluation criteria set out in the bidding documents. The comparative statement so prepared shall be signed by all members of the Committee. The table shall include following:-

- (a) Name and address of the bidders including e-mail address;
- (b) If Technical bids have been evaluated, whether the bidder has qualified in evaluation of Technical bids;
- (c) Specifications of the subject matter of procurement offered by the bidders;
- (d) Rates quoted per unit, per item and total price of each item quoted or percentage above, below on the rates in the bidding documents, as the case may be;
- (e) GST (CGST, SGST, IGST), admissible duties, rates and other taxes, if any, all of which shall be shown separately;
- (f) Packing and forwarding charges, freight, insurance charges, etc.;
- (g) Total cost per unit, per item and for all items including all cost, charges and taxes;
- (h) Discount or rebate, if any and if permitted;
- (i) Alternative offers, if permitted;
- (j) Delivery period or completion (of works) period quoted;
- (k) Validity period of bids quoted;
- (l) Mode of payment quoted;
- (m) Samples, trials offered and results of sample testing and trials if asked for;
- (n) Guarantee, warranty and defect liability period quoted, if asked for;
- (o) Contract maintenance period quoted, if asked for;
- (p) Responses to any other information asked for in the bidding documents;



- (q) Any conditions quoted different from those included in the bidding documents;
- (r) Any material deviation, reservation or omission from the required specifications or terms and conditions specified in the bidding document;
- (s) Standing of the bidder in the evaluation of financial bids;
- (t) Combined evaluation of Technical and Financial bids, if stipulated in the bidding documents and the standing of the bidders in such combined evaluation;
- (u) Claim of registered Micro and Small Enterprises bidders located in the State for price preference in terms of the Procurement Preference Policy, Assam, 2021, if any.

2.8.2 The members of Bid Evaluation Committee shall give their recommendations below the table clearly indicating the lowest bid or most advantageous bid and sign it indicating date.

## **2.9 Evaluation of Technical bids in case of two envelop or two parts bids**

- 2.9.1 Subject to the provisions of Section 7 & Section 14 of the APP Act, Technical bids shall be evaluated solely on the basis of the criteria or terms and conditions set forth for evaluation of technical bids in the bidding documents and in accordance with the procedure as per Rule 23(16) of the APP Rules. Such criteria for evaluation of technical bids in the bidding document, shall not be changed or relaxed under any circumstances;
- 2.9.2 Techno-commercial qualifications of the bidders shall be evaluated by the Bid Evaluation Committee in tabular form as mentioned above based on the criteria included in the Bidding document. This technical (quality) evaluation criteria can be either a fail/pass criteria or it may be a more complex grading and ranking system in which a technical score is assigned. Bids which meet the technical parameters and commercial conditions are declared as Techno-commercially acceptable offers. The Bidding documents may provide fail/pass criteria or grading/ranking system. Evaluation shall be made on the basis of the weightings of marks assigned or minimum achievements as fixed in the bidding documents for the various criteria for qualifications in the areas of professional, technical, financial, managerial competence, etc. i.e. like number of years of experience of the bidder in the subject matter of procurement, satisfactory completion of similar contracts in certain number of past years each of a value not less than specified percentage of the value of subject matter of procurement, financial turnover of the bidder in certain number of past years in relation to the value of the subject matter of procurement under consideration, the value of orders in hand of the bidder at the time of submitting the bid relative to the value of the subject matter of procurement, etc.
- 2.9.3 Bids that are not responsive or contain any material deviation shall be rejected.
- 2.9.4 Bidders securing the specified minimum percent of marks or having fulfilled specific minimum achievement norms as fixed may be considered as qualified.
- 2.9.5 The number of firms qualified in technical evaluation should not generally be less than three. If the number is less than three and it is considered necessary by the procuring entity to continue with the procurement process, reasons shall be recorded in writing and included in the record of the procurement proceedings.
- 2.9.6 The date, time and place fixed for opening of financial bids shall be communicated in writing to all the bidders who qualified in the technical evaluation. The date so fixed shall be not later than seven working days from the date of issue of such communication.

2.9.7 The authenticity, integrity, sanctity and safe custody of the unopened Financial Bids shall be ensured during the evaluation of Technical Bids. At the time of opening of the Technical Bid, the Financial bids shall be put in a large envelop, which shall be dated, sealed and signed by the Members of the Bid Evaluation Committee as well as the bidders, if present, and placed under lock and key to demonstrate that none of the bids were accessed during the custody of the Financial bids.

## 2.10 Evaluation of Financial Bids

### 2.10.1 Correction of Arithmetic Errors in Financial Bid (Rule 23(17))

- (a) The Bid Evaluation Committee shall correct arithmetical errors in responsive bids, in the following cases, namely:-
- (i) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Bid Evaluation Committee there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (ii) if there is an error in a calculation of the total corresponding to the addition or subtraction of subtotals, the subtotals 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, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to clauses (i) and (ii) above.
- (b) If the price bid is ambiguous leading to two equally valid total price amounts, the bid shall be treated as non-responsive and rejected.
- (c) The provisions in this rule shall not apply to e-procurement where the arithmetic calculations shall be done by the software in the portal and such issues are unlikely to arise.

2.10.1 Subject to the provisions of **Section 27 of the Act**, financial bids shall be evaluated in accordance with the procedure prescribed under the **Rule 23(18)** of the APP Rules:

- (a) In case of single envelop bid systems where bids are received in single cover along with requisite bid security, processing fee and price of bidding documents within the specified time, bids shall be opened as per procedure and evaluated by the Bid Evaluation Committee in accordance with the criteria and terms in the bidding document;
- (b) In case of two envelop or two stage bid system, the financial bids of only those bidders who have qualified in the technical evaluation shall be opened by the Bid Evaluation Committee at the notified time, date and place in the presence of the bidders or their representatives who choose to be present as per **Rule 23 (9)** relating to opening of bids;
- (c) Conditional bids shall be liable to be rejected;
- (d) The financial evaluation shall include all costs, taxes, duties, charges applicable to the bidder;

- (e) The comparison of the responsive bids shall be considered on the total outgo of public money from the procuring entity for the procurement to be paid to the supplier or to any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies, freight, insurance etc., duly delivered, commissioned, as the case may be, and the evaluation criteria specified in the bidding documents shall only be applied accordingly;
- (f) If the bids were invited on a variable price basis, the responsive bids shall be evaluated, compared and ranked on the basis of the position prevailing on the day of opening of bids and not on the basis of any future date. In case of two stage bid system, such ranking shall be based on the position prevailing on the date of opening of the Technical bids;
- (g) While evaluating bids, factors such as high quality performance, environment-friendly features, low running cost, low maintenance cost, and the like shall be taken into account provided that these are specified in general in the bidding documents;
- (h) The offers shall be evaluated as provided hereinabove and marked **L1, L2, L3 etc.**, where **L1** is the lowest offer and then others in ascending order i.e. Least Cost Criteria (LCC) in case price is the only criteria, or evaluated and marked **H1, H2, H3 etc.**, where **H1** is the highest scorer and then others in descending order, in case quality is also a criteria and the combined score of technical and financial evaluation is being considered;

***(Least Cost System (LCS) is the only prescribed method of selection for goods, works and non-consulting services. However, other method of selections like; Quality and Cost Based Selection(QCBS), Quality Based Selection(QBS), etc., are prescribed for Consulting Contracts only.)***

- (i) If certain bidders offer suo-motu discounts and rebates **after opening** of the bid, techno-commercial or financial, these shall not be considered for the purpose of ranking the offer but if such a firm does become L1, or H1 as relevant, at its original offer, such suo-motu rebates shall be incorporated in the contracts. This also applies to conditional rebates like rebate for faster payments, etc;
- (j) In case Rate contracts are to be entered into, with more than one firm if provided in the bidding documents to ensure uninterrupted delivery, counter offer of the lowest rate shall be given to the bidders quoting the next higher rates for acceptance in order of the ascending value of the bids.

2.10.2 The Bid Evaluation Committee shall prepare a comparative statement in tabular form as per **Rule 23(11)** of the Rules relating to **Tabulation of Technical bids** and comparative statement in Tabular form as per **Rule 23(12)** of the Rules relating to **Tabulation of Financial bids** in case of two envelope or two part Bids. However, there shall be a single Tabular statement in case of Single envelope Bid and shall contain all relevant information as mentioned in **Rule 23 (12) (ii)** of the Rules. The report on the evaluation of financial bids shall contain the recommendations to the procuring entity for acceptance of the lowest offer, if price is the only criterion, or most advantageous bid in the other case provided the bid so recommended by the Committee shall be reasonable and justified.

2.10.3 While evaluating bids and recommending the offer to be accepted, the Bid Evaluation Committee shall consider and give effect to the price preference for Micro and Small

Enterprises in the State as prescribed in the Assam Procurement Preference Policy, 2021 or such other price or purchase preference that may be notified by the State Government from time to time.

### 2.11 Comparison of Rates Quoted in Foreign Currency

In case of International Competitive Bidding (ICB), if the bidders quote the prices in foreign currencies (as per the provisions of the bidding documents), as per **Rule 23(19)** of the Rules, the prices may be compared by converting all the bids to Indian National Rupees using the 'Bill Currency (BC) Selling' foreign exchange rates, prevalent on the closing date of bid submission, from the source as specified in the bidding documents.

## 3. Lack of Competition

**3.1 Rule 23(20)** of APPR prescribes following procedures to be followed by the Bid Evaluation Committee to deal with the situation of lack of competition:

**3.2** In case of a situation where, after the evaluation of bids, the Bid Evaluation Committee ends up with one responsive bid only, the Committee shall check as to whether while floating the Notice Inviting Bids all necessary requirements to encourage competition, like, standard bidding terms and conditions, industry-friendly specifications, wide publicity, sufficient time for formulation of bids, etc. are fulfilled. If not, the Committee shall recommend cancellation of the bid process and issue of fresh Invitation for Bids after rectifying the deficiencies and the procurement entity shall act accordingly as recommended.

**3.3** Subject to strict adherence to all the prescribed procedures and other relevant conditions outline in the Rules and the provisions of the Act, which shall be certified in writing by the concerned procuring entity, detailing the process undertaken, the bid process shall be considered valid even if there is one responsive bid, provided that:-

- (a) the bid is technically qualified;
- (b) the price quoted by the bidder is considered to be reasonable;
- (c) the bid is unconditional and complete in all respects;
- (d) there is no indication of cartelization amongst bidders; and
- (e) the bidder is qualified as per the provisions of Section 7 of the Act.

**3.4** In such cases, the Bid Evaluation Committee shall prepare a justification note, in which the specific views of the Finance and Accounts Officials/Members shall be necessary and on which the approval of the next higher authority of the procuring entity in terms of the relevant Delegation of Financial Powers shall be obtained. The bid shall be finalized only after such approval is accorded in consultation with the Finance and Accounts Officials/Members.

## 4. Reasonableness of the Price

**4.1** The Bid Evaluation Committee(BEC) Shall recommend for award of the contract only when the discovered price is found to be reasonable by it. Reasonableness of price is the most important criteria for award of the contract. So, while recommending for the award of contract the BEC shall declare that the rate discovered for the subject matter of procurement are reasonable. The reasonableness of the price as discovered is established by comparing it with (a) Estimates Cost and/or (b) Last Purchase Price(LPP)

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

points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:

- 4.3 The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
- 4.4 Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;
- 4.5 Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- 4.6 Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;
- 4.7 In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- 4.8 It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
- 4.9 Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

## 5. Price Negotiations

- 5.1 Save as otherwise provided for in Section 31 and section 35A of the Act for procurement by the methods of single source procurement or competitive negotiations, no negotiations shall be conducted after the pre-bid stage till the completion of the evaluation of bids by any procuring entity.
- 5.2 Negotiations may however be undertaken as per Section 15 of the Act and Rule 16(2) of the Procurement Rules, if so approved by the competent authority, only with the lowest or most advantageous responsive bidder under the following circumstances :-
  - (a) when ring, pool or cartel prices have been quoted or are suspected to have been quoted by the bidders for a subject matter of procurement;
  - (b) when the rates quoted vary considerably or are unreasonable or higher than the prevailing market rates.
- 5.3 The competent authority having previously approved the holding of negotiations, the bid evaluation committee shall have full powers to undertake such negotiations, provided that the reasons and results of negotiations shall be recorded in detail.
- 5.4 The lowest or most advantageous responsive bidder shall be informed of the proposed negotiations in writing either by email or by registered letter in such a way so as to not render the original offer of the bidder inoperative. A minimum time of seven working days from the date of delivery of such communication to that bidder shall be given for calling negotiations. In case of urgency, the Bid Evaluation Committee, after recording reasons thereof, may reduce such time to not less than three working days, provided that the lowest or most advantageous bidder has received the intimation in time and consented to negotiations.

- 5.5 At the end of negotiation, revised bids shall be obtained in writing from the selected bidder in a format that commits him to keep both the revised and original bids valid for 45 days. The revised bid so obtained shall be read out to the bidder or its representatives present. In case the selected bidder prefers to send a revised bid instead of being presented at the time of negotiation, the offer shall be taken into account. In case a bidder does not submit the revised bid, its original bid shall stand unrevised.
- 5.6 In case the rates are considered unreasonable or high or are higher than prevailing wholesale market rates even after the negotiations, bids shall be rejected and fresh bids shall be invited.

**6. Bid Evaluation Committee Minutes Format (For Techno-Commercial / Financial bids)**

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



- Bid-wise deliberation should be recorded
- Start with review of techno-commercial evaluation
- In case of evaluation of Financial Bids, Insert a summary table of evaluated price in the order of L1, L2, etc.
- Deliberations should be in the sequence of L1, L2, etc.

**Section V: Summary of Recommendations**

- Bid-wise recommendation should be recorded
- In case of evaluation of financial bids, give a summary of recommended bid(s), award value, bid expiry date and special conditions, if any.
- Also mention that the rates recommended are considered reasonable (and basis for such determination).
- Total value of the recommendations for determining level of acceptance authority.
- Mention that none of the BEC members have any conflict of interest with the parties recommended for award. Request acceptance of recommendations by competent authority and that it's within his powers of acceptance as per SoPP/ DFPR.

Signature Name and Designation of the Members

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

## FINALISATION OF CONTRACT

(Financial Accounting Aspects)

### Learning Outcomes

- After studying this module, you will be able to understand
- BEC Recommendations are Acceptance Award of Contract
- Performance Security Refund Bid Security
- Requirement of Letter of Credit Liquidated Damages
- Describe Breach of Contract, Remedies and Termination Offences & Penalties

### 1.1 Acceptance of the Recommendations of the Bid Evaluation Committee(BEC)

1.1.1 **Role of Bid Evaluation Committee:** The Bid Evaluation Committee (BEC) is committee duly appointed by the appropriate procuring authority for the purpose of evaluation of bids received by a procurement entity within due date of submission. The primary responsibility of BEC is to evaluate all the bids, as per the set criteria in the bid document, in a transparent, efficient and unbiased manner, to find the most suitable amongst them for awarding of the bid. Different stages for evaluation of the bid in a sequential order are given as below:

- (a) Preliminary Examination of Bids
- (b) Evaluation of Technical Bids
- (c) Opening of Financial Bids
- (d) Evaluation of Financial Bids
- (e) Determination of Responsiveness
- (f) Assessment of Reasonability of Rate
- (g) Negotiations (if needed)
- (h) Submission of recommendations to Tender Accepting Authority (TAA).

1.1.2 The Bid Evaluation Committee submits its recommendations after completion of the evaluation and deliberations on the evaluation findings to the Tender Accepting Authority (TAA). BEC's recommendations could be:

- (a) to accept the bid of the successful bidder and award the contract
- (b) to conduct a round of negotiations
- (c) to cancel the current bidding process and re-invite bids (BEC may suggest some modifications to the bidding document)
- (d) to cancel the current bidding process and return demands to the indenting official/ office
- (e) any other recommendation

1.1.3 The members of the BEC may examine the bids individually, but the meeting must be convened to discuss on the evaluation findings in presence of all the members. During

their deliberations, the BEC must consider and discuss each offer in detail and bring out cogent reasons for making its recommendations. They should also give references to the relevant pages of the bid, quote relevant rules, office orders etc., for ready reference of the TAA.

1.1.4 In case the BEC recommends acceptance, it should make formal recommendations for the award of the contract to the bidder whose bid has been determined to be substantially responsive and most preferred 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 BEC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the BEC that any deviation/variation quoted by the supplier in his bid is not left un-discussed and ruled upon in the BEC meeting; otherwise, there may be a delay in acceptance of the contract by the supplier

1.1.5 **Role of Tender Accepting Authority (TAA):**

- (a) An office (procuring entity) making procurement, the power for accepting bids is distributed as per the authority levels of the respective officers. Higher-level officers can accept bids of higher value and lower officers can accept bids of lower value. The distribution of Financial Powers is prescribed in the Delegation of Financial Power Rules or vide an office order.
- (b) The “level” of a case is decided by the value of the lowest “acceptable” bid (and not the “lowest bid”). The authority who has the financial power to accept this bid is the Competent Authority or Tender Accepting Authority (TAA) for the case. The members of the Bid Evaluation Committee will generally comprise officers who are one level junior to the TAA. The TAA cannot be a member of the BEC.
- (c) The BEC has a recommendatory role, i.e., it can make recommendations, but it does not have the power to accept bids, negotiate with bidders, re-invite bids or cancel the procurement on its own. For each of the above actions, it must approach the TAA through its recommendations. If the TAA accepts the recommendations, then that action can be carried out.
- (d) However, the TAA has a greater role than merely accepting the recommendations of the BEC. While considering the recommendations, he must examine the following points:
  - i) whether the bidding process was fair
  - ii) whether bid evaluation has been done comprehensively and without bias
  - iii) has the BEC considered all relevant points during their deliberations
  - iv) is the recommended course of action justified?
  - v) will the recommended bidder be able to complete the contract
  - vi) is the recommended price reasonable
  - vii) is the subject matter of procurement still required by the indenting department, and will not be rendered surplus or obsolete soon after procurement
- (e) The TAA can accept the recommendations of the BEQ, if it is satisfied with the evaluation and selection process as mentioned in above para. However, the TAA is not

bound to accept the recommendations of the BEC. He can examine the procurement case and the bids independently, and arrive at his own decision, which at times may not agree with the BEC's view. In such a situation, the TAA may:

- i) Send the recommendations back to the BEC for re-examination/ clarification of certain issues. The BEC will meet again and submit their recommendations. If the recommendations now received are convincing, the TAA may accept them. However, if the BEC reiterates its earlier recommendations, i.e., does not agree with the TAA's viewpoint, the latter can then take his own decision which will be final.
- ii) Overrule the recommendations of the BEC giving clear reasons for doing so and give his decision, which will be final.

(f) After the decision of the TAA, the Notification of Award can be issued.

1.1.6 **Handling Dissent:** During discussions on the merits/demerits of the bids received, there may be differences of opinion between the BEC members on certain points. The members must try to understand the points of dispute and attempt to resolve it among themselves. If it is not possible to come to a consensus the members should record the reasons of dissent in a careful and detailed manner giving reasons justifying each point of view. The final recommendations should be that of the majority view, with the dissenting member giving a dissent note. In such a case the role of TAA becomes even more challenging. He may agree with one side or take an independent view, in both circumstances giving strong justification, and must shoulder a higher responsibility for his decision.

#### 1.1.7 **Award of Contract**

1.1.8 **Letter of Acceptance:** After the Competent Authority (CA) has accepted the bid, a Letter of Acceptance is sent to the bidder in writing and email, which contains the description, quantity, terms, and conditions of the acceptance. He is asked to deposit the required performance security (within 15 days) and to execute an agreement in the format given in the bidding documents on a non-judicial stamp paper of requisite value.

1.1.9 **Contract:** After the Performance security and the signed agreement is received, the formal contract is sent to the bidder. On behalf of the procurement entity, the contract shall be signed by an authority empowered to do so, after receipt and verification of the performance security.

### 1.2 **Submission of Performance Security**

1.2.1 A Performance Security of required amount is required to be submitted by a bidder after it has been declared as the successful bidder by the procuring entity by issuing the Letter of Acceptance.

1.2.2 It serves as a safeguard for the procuring department and serves as a deterrent against non-performance of the contract by the supplier. In case the supplier fails to complete his obligations under the contract the performance security can be forfeited. It is also called a "Security Deposit" (SD).

1.2.3 The requirement of Performance Security, its amount, acceptable forms, conditions and how it will be returned or refunded are declared in the bidding document beforehand, and stated in the contract.

1.2.4 **Amount & Currency:**

- (a) The amount of performance security should be at least 5% of the value of the supply order or work order and in the same currency. The amount may be amended by the State Govt from time to time.
- (b) Suppliers may be asked to deposit a higher amount of performance security if the procuring entity foresees that the risk of the supplier(s) failing to complete the contract is higher. However, a higher amount reduces the amount of funds available with the supplier for execution of the contract. For this reason, charging higher performance security may be counterproductive.

1.2.5 **Forms:** Performance Security should be submitted by the successful bidder in any of the forms as specified in the bidding document. The usual forms are:

- (a) deposit through online mode,
- (b) Bank Guarantee of a Scheduled Bank, (this is called the Performance Bank Guarantee, or PBG). The format of the Bank Guarantee is usually specified in the bidding documents. Bank Guarantee presented as Performance Security shall be verified and confirmed from the concerned issuing bank.
- (c) Fixed Deposit Receipt (FDR) of a Scheduled Bank which shall be duly endorsed in the name of procuring entity on account of the bidder and discharged by the bidder in advance. Before accepting the Fixed Deposit Receipt, the procuring entity shall ensure that the bidder furnishes an undertaking from the bank to make payment or premature payment of the Fixed Deposit Receipt on demand to the procuring entity without requirement of consent of the bidder concerned. In the event of forfeiture of the performance security, the Fixed Deposit shall be forfeited along with interest earned on such Fixed Deposit.
- (d) any other form prescribed by the State Govt.
- (e) In case of Global Competitive Bidding, 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

1.2.6 **Time for submission:** The successful bidder must submit the performance security to the procurement entity within 15 days of the date of the Letter of Acceptance (or such other days as mentioned in the bid document). In case of non- submission, the procurement entity can withdraw the acceptance and take administrative action(s) against the bidder.

1.2.7 **Validity:** The performance security, submitted in any form except an online deposit, must remain valid for *at least* sixty days beyond the date of completion of all contractual obligations of the supplier, including guarantee/warranty obligations, maintenance, and defect liability period, whichever is the latest.

1.2.8 **Verification of Bank Guarantee:** To ensure authenticity of BGs submitted in form of hardcopy by the bidders towards performance security/advance payments, following points has to be adhered to by the procuring entity:

- (a) The bidding document should contain a format for submitting PBG for Performance Security and Advance Payment Security. Bidders should be advised to submit the BG in the prescribed format only.

- (b) The BG should contain the name, designation and code number of the Bank officer(s) signing the guarantee(s);
  - (c) The BGs should be issued by any scheduled commercial bank in India having branch(s) in Assam.
  - (d) Confirmation letter from the issuing bank should be obtained (either through the nearest branch or issuing branch) either vide official mail or in the letterhead of the bank addressed to the Procuring Entity, confirming the authenticity of the BG instrument.
- 1.2.9 **Custody:** After placement of Contract, the performance security received from the successful bidder must be properly documented and kept in safe custody (in case of hardcopy) of the finance and accounts section of the concerned procuring entity or indenting office. The validity of the instrument must be monitored regularly for timely renewal.
- 1.2.10 **Return/Refund:** If the Party, whom the contract has been awarded, completes/fulfills all its contractual obligations successfully, the performance security can be released. The performance security shall be returned to the party within the timeline as specified in the bidding document, from successful completion of all its contractual obligations.
- 1.2.11 **Forfeiture:** The performance security may be forfeited by the procuring entity in the event of the Supplier's failure to complete his obligations under the contract. The breach may not result in forfeiture of the performance security if the breach has been caused due to a Force Majeure event.
- 1.2.12 **Refund of Bid Security**
- 1.2.13 A Bid Security is a financial instrument provided by the bidder to the procurement entity along with his bid. After the opening of bids, if the bidder withdraws his bid or modifies it in any way, the bid security submitted by him can be forfeited by the procuring entity.
- 1.2.14 The circumstances in which a Bid Security can be returned to the bidder have been discussed in Module 8 under the heading "Bid Security".

### 1.3 Requirements for Letter of Credit (LC)

#### 1.3.1 What is Letter of Credit (LC)

- (a) A Letter of Credit is a payment method commonly used in international transactions. The buyer and the seller may be in different countries and thus may be subject to completely different sets of domestic laws, currency, rules and restrictions.
- (b) The usage of the LC method arises from the fact that when it comes to payments, the Buyer and Seller have a higher trust in their banks than on themselves. The Seller's worries that once he delivers the goods, it may be difficult to get payment from the Buyer, or the Buyer may delay payment on one pretext after another. In either case, it will be very difficult and costly for him to get his dues cleared since the buyer is in another country and it is not feasible for him to travel to the buyer's location. The buyer worries that once he makes the payment, the seller may ship defective/ deficient/ fraudulent goods, after which it will be very difficult and costly to get a refund from the seller. So, Bank(s) are brought in between the parties to guarantee the payments part of the sale transaction by the process of a Letter of Credit. In short, a Letter of Credit is a payment guarantee made by the buyer's bank to the seller.



- (c) The Seller wants
  - Quick payment, as soon as goods are shipped by it,
  - assurance of payment,
  - convenience, of getting paid in his country at a bank of his choice, on time
- (d) The Buyer wants
  - that the seller should ship goods of the agreed quality,
  - the seller to insure the goods to cover risks during transport
  - to pay for the goods after they have been handed over by the seller to a transporter
- (e) When an LC is opened by a buyer, he informs the Bank that there is a contract between him and the seller for the purchase of certain goods for which payment has to be made. By submitting the LC opening form, he instructs the Bank to make payment when the Seller gives them a certain set of documents.
- (f) The Bank drafts the LC on the basis of this form and sends it to the seller's bank, who in turn sends it to the seller for confirmation. If the LC terms are acceptable, banks are informed, and the LC gets opened. If the seller does not agree to the terms of the LC, he returns it to the buyer through the banks for correction and resubmission.
- (g) The buyer's bank does not pay the seller directly. It does so through either its branch in the Seller's country or through any other bank convenient to the Seller if it does not have branches of its own.

#### 1.3.2 LC as a Contract:

- (a) When an LC is opened, the application form and its acceptance by the Bank, or the latter's action of issuing an LC, forms an agreement between the buyer and the Bank, which binds the bank to
  - act strictly according to the terms of the LC, and,
  - to pay the seller if the documents listed in the LC are received from him and are found to be in terms of the LC.
- (b) In effect, the LC acts like a payment assurance to the seller. It guarantees him payment on the presentation of documents as per the LC.
- (c) It is important to note that the LC does not care about the physical condition, possession or title to the goods. Its only requirement is that documents must be submitted in terms of the LC for payment to be made. For this reason, an LC is called "documentary credit"

#### 1.4 Parties to an LC:

The Parties to an LC are:

- (a) **Applicant** - the buyer, who applies for opening an LC in favour of the seller,
- (b) **Beneficiary** - the seller who will receive payment through the LC,
- (c) **Issuing Bank** - the bank that opens/issues the LC in favour of the seller. This Bank takes responsibility for or "guarantees" the payment to the beneficiary (seller), **Advising Bank** - this is a bank convenient to the Seller, who will advise him that the LC has been

opened, and receive payment from the Issuing Bank. It assures the seller that the LC is genuine. It checks that documents submitted by the Seller are in terms of the LC before forwarding them to the Issuing Bank and claiming payment.

- (d) **Confirming bank** - (optional party) a bank, usually situated in the seller's country, which adds its separate payment guarantee to the LC in addition to the guarantee of the issuing bank. It takes over the task of paying the seller from the issuing bank.

1.4.1 **Selection of Bank:** The buyer (Procuring Entity) can open an LC through the State Bank of India or any other scheduled/authorised bank. Provisions of Uniform Customs and Practices for Documentary Credits should be adhered to while opening the LC for import into India. The UCPDC is a set of rules regarding techniques and methods for handling LCs in inter national trade finance which has been standardised by the International Chamber of Commerce, the current version being the UCP600.

It is not necessary that the buyer should choose the bank where he has his account. In a competitive scenario, he can shop around, take quotations from several banks, choose a bank whose charges are reasonable and expertise in handling LC payments is well established.

1.4.2 **Process of LC payment:** The process of opening and operating an LC is as under:

- (a) In the bidding document, the payment clause mentions "Payment by Letter of Credit",
- (b) the supplier, when submitting his bid accepts this mode of payment. It may also happen that the bidding document is silent about the mode of payment, and the supplier asks for LC as the mode of payment, which is accepted by the TAA. He also quotes the name & address of the bank convenient to him, which will act as the advising bank,
- (c) A contract is entered into between the seller and the buyer for supply of goods with LC payment clause,
- (d) The buyer approaches his bank to open an LC, specifying details of the contract, item description, quantity, amount, delivery date etc., and the conditions to be fulfilled by the seller for payment to be made. The Bank examines the conditions for acceptability,
- (e) The Buyer's bank prepares the draft LC and sends it to the Seller's Bank.
- (f) Seller's Bank forwards the LC to the seller (exporter)
- (g) Seller reviews the conditions stipulated in the LC.
- (h) If terms of the LC are agreeable, the seller accepts the LC, informs his bank, who in turn informs the buyer's bank and the LC gets opened.
- (i) the seller manufactures the goods and arranges inspection if required by the contract,
- (j) he then ships the goods by the agreed mode of transport obtaining the required
- (k) documents in terms of the LC,
- (l) After shipping the goods, the seller submits the documents to his bank (advising bank).
- (m) [In case the LC is a "Confirmed LC" the seller submits the documents to the confirming bank who checks them and makes payment to the seller. Thereafter the confirming bank sends the documents to the issuing bank and claims reimbursement]

- (n) The Seller's bank reviews the documents. If they are in terms of the LC it forwards them to the Buyer's Bank. Otherwise, it returns them to the seller for correction.
- (o) If the Buyer's Bank finds that documents are not in terms of the LC, it sends the documents back to the seller's bank for obtaining correction(s) from the seller and resubmission
- (p) If the buyer's bank finds documents to be in terms of the LC, it makes the payment to the seller's bank, who informs the seller.
- (q) After making the payment, the buyer's bank forwards the documents to the buyer and raises a claim for funds. If the buyer finds the documents as per LC he makes payment to the issuing bank.
- (r) If documents are not as per the LC the buyer can legally refuse to make payment to the issuing Bank because the Bank has not acted as per his instructions.
- (s) Where the issuing bank is required to make payment to the seller's bank (or to the confirming bank) in foreign currency, which it has to buy from the currency market at a commission. This commission is recovered from the buyer along with the applicable LC charges.

#### 1.4.3 Types of Letter of Credit

1.4.4 **Revocable Letter of Credit:** A Revocable LC can be revoked (cancelled) or its terms can be modified at any time by the buyer (by instructing his bank) without seeking the consent of the seller. In this way, it is a one-sided document favouring the buyer, and for this reason, it is rarely accepted in international trade.

- (a) **Irrevocable Letter of Credit:** An Irrevocable LC cannot be revoked (cancelled) by the buyer and its terms cannot be modified without the consent of the other party. In this way, it is fair to both parties. This type of LC gives a higher degree of security of payment to the seller and is, therefore, the most accepted form of LC in international trade.
- (b) **Confirmed LC:** An LC is opened because the seller does not trust that the buyer will pay him but trusts that the buyer's bank will. What if the seller doesn't trust the buyer's bank too? He asks for a "confirmed LC". In a "confirmed" LC a third bank, usually situated in the seller's country, "confirms" or guarantees the payment in addition to the LC issuing bank (buyer's bank), and thereby becomes a party to the LC. The confirmation gives an additional layer of protection to the seller, that he will get payment from the confirming bank. It comes at an additional cost as the confirming bank also adds its charges to the transaction. Because of this additional charge, confirmed LCs are expensive and not used much in international trade.
- (c) **Revolving Letter of Credit:** A revolving letter of credit is a single letter of credit that covers multiple shipments over a long period. It is used for regular shipments of the same item between the same buyer (importer) and the seller (exporter). In such credits, either the LC amount is restored to the original amount after it has been utilised, or the LC is made cumulative. It obviates opening a separate LC for each shipment and is, therefore, cheaper and convenient to use. In the case of procurement of goods, where there is a staggered supply arrangement, the payment can be done using a revolving letter of credit.

- (d) **Sight LC:** Payment is made against this LC “on sight”, i.e., as soon as the documents meeting the terms of the LC are submitted to the bank
- (e) **Deferred LC:** Payment to be made against this LC is deferred, i.e. made on a pre-defined future date even though all documents have been submitted in terms of the LC.

#### 1.4.5 Information required for Opening an LC:

The following information is required to be supplied by the buyer to the Issuing bank when applying for an LC:

- (a) Type of LC
- (b) Contract ID (of the contract between the Buyer and the Seller)
- (c) Name, address, email, contact person, phone numbers of the seller and buyer
- (d) Amount of Credit and Currency (this amount may be an estimated amount to meet contractual payments plus some amount to cover contingencies)
- (e) Validity of the LC (this date is usually selected as four weeks after the last delivery date of the contract, so that the LC does not have to be extended if the supplier delays his shipment or delays in claiming payment. (Remember, each modification to the LC, for any reason, will cost money to the buyer.)
- (f) Instalments and delivery date(s), if multiple shipments are expected, OR,
- (g) Last shipment Date
- (h) Mode of Delivery as per Incoterms (i.e.FAS, FOB, CIF, CIP etc.)
- (i) Delivery Instructions (where does the supplier have to deliver the material)
- (j) Shipment From & To ports/places/ airports
- (k) Consignee and ultimate consignee
- (l) Part shipment allowed/not allowed
- (m) Liquidated Damages Clause (the buyer’s bank will deduct LD in case of delayed shipments or instalments)
- (n) Documents to be provided by the seller when claiming payment
- (o) Any other condition(s) to be met before releasing payment

1.4.6 **Documents required at the time of claiming LC payment:** LC is a mechanism where payment is made against documents, and not against physical delivery of goods. The documents required are specified in the LC, and the seller must furnish exactly these documents and with accurate information for payment to be released by the Issuing bank. The buyer requires these documents to make sure that the Goods are of agreed quality, they have been inspected, insured (if required), shipped, cleared for export by the Customs in the seller’s country, and can be cleared in the buyer’s country for import. The documents usually required are:

- (a) Original Invoice
- (b) Packing List
- (c) Certificate of Origin from the Seller’s Chamber of Commerce,

- (d) Internal Inspection Certificate, Test Reports, Manufacturer's Works Test Certificate,
- (e) Quality Certificate, etc
- (f) Inspection report of an external inspection agency (if required)
- (g) Hazardous Material certificate, (if applicable)
- (h) GMP (Good Manufacturing Practices) certificate, COPP (Certificate of Pharmaceutical Product) in case of import of pharmaceuticals,
- (i) Insurance at 110 % of value in case of CIF/CIP delivery terms, i.e. Insurance has to be taken by the seller before dispatching the goods
- (j) Performance Bond / Quality Certificate
- (k) Clean Onboard Bill of Lading OR Clean Onboard Airway Bill
- (l) All the above documents and the required number of copies should be signed by an authorised signatory of the supplier.

*The signature of the supplier or their authorised representative should be available with the bank and verified by them before releasing LC payment.*

#### 1.4.7 Extension of LC:

- (a) Letter of Credit is an agreement between the buyer and the Issuing bank. As in the case of agreements, it has an expiry date. If this date is over, the banks will not honour the LC, i.e., they will not make payments against the LC because the LC has "expired". To keep the LC alive, it must be extended before the validity is over.
- (b) The Issuing Bank may charge a fee for extending the validity of the LC. If the extension had to be done because of the seller's delays then he should pay the Bank charges, otherwise, the buyer should bear them,
- (c) In addition to the LC, the contract delivery date may also need an extension. In such case, the date of last delivery of the Contract should be extended, and also the validity of the supplier's Performance Bank Guarantee.

## 1.5 Liquidated Damages

### 1.5.1 Delivery Period & Delivery Dates:

- (a) Contracts have a specific clause for delivery, which may state that delivery of goods and related services must be completed within a certain period of time. Related services could be installation, commissioning, training, manuals etc. For example, a contract may specify the delivery period as:

*"Delivery to be made within 6 weeks" OR*

*"Delivery within 6 weeks"*

The term "Delivery" here includes goods/works and related services. It should be clearly mentioned in the bidding document whether the delivery period shall be counted from the date of contract signing or from the date of issue of the Purchase Order or Work Order. The supplier has to complete the supply/work/service within the delivery period. This clause means that the delivery period starts from the date of contract (or issue of Purchase/Work Order) and ends 6 weeks thereafter. The date

of contract is the earliest delivery date and the date after 6 weeks is the last delivery date. The supplier should deliver at any time in this time period.

There may be a delivery clause like this:

*“Delivery should start after 6 weeks and must be completed within 10 weeks”*

This clause means that the delivery period starts after 6 weeks of the date of contract (or issue of Purchase/Work Order) and ends after 10 weeks of the date of contract. The date after 6 weeks of contract date is the earliest delivery date and that after 10 weeks is the last delivery date. (Delivery will not be accepted before the earliest delivery date).

In both examples, there is a last date for the delivery period. After this date, the contract does not permit delivery to be made unless the parties agree to extend the last delivery date for which a modification of contract should be issued.

#### 1.5.2 Nature of Liquidated Damages (LD):

- (a) Non-delivery or partial delivery or delayed delivery is a breach of contractual obligation in the part of the supplier or contractor. Such non-compliance by the agency/contractor has both financial and operational impact adversely. Since the purchaser sustains loss and/or inconvenience because of the agency's failure to deliver on time, and is thus entitled to compensation.
- (b) A question difficult to answer is: If the purchaser has to be compensated, how much should the compensation be? The purchaser must be compensated at least for the amount of loss actually incurred by him due to the late delivery. The quantification of this loss is not an easy task and leads to unnecessary litigation. Hence contracts include a “Liquidated Damages” clause which is a “pre-estimated” monetary compensation for all kinds of losses actually and notionally incurred by the purchaser. Since both parties have agreed to the clause, the courts don't easily entertain disputes over the amount of compensation payable once the LD clause is present. Also, the purchaser does not have to quantify and justify the loss due to delay in delivery by the supplier.

#### 1.5.3 Quantum of LD:

- (a) A Liquidated Damages clause may read like this:

*“In case of failure on the part of the supplier to arrange supplies as per the delivery schedule / instalments fixed in advance, save force majeure conditions or delays attributable to Purchaser, the purchaser reserves the right to levy Liquidated Damages which shall be levied as under:*

*Liquidated damages and not by way of penalty, a sum of equivalent to 2% (two percent) of the price of any stores (including elements of taxes, duties freight etc.) which the supplier has failed to deliver within the period fixed for delivery in the contract or as extended, for each month or part of a month during which the delivery of such stores may be in arrears where delivery thereof is accepted after expiry of the aforesaid period, subject to a maximum of ten percent of value of the delayed supplies.*

The above clause can be explained in this manner:

- LD is due to the failure of the supplier,



- LD is not due if the purchaser has delayed, or a Force Majeure condition has occurred
  - LD clause gives the purchaser a “right” to recover LD
  - LD is not a penalty, but compensation for loss
  - LD is chargeable only on delayed quantity, and not on the ordered quantity. (If a supplier has given 90 pieces on time but delayed 10 pieces, LD will be chargeable on 10 pieces only).
  - LD is calculated on the total value of delayed goods, i.e., price plus taxes, duties, freight etc.
  - 2% of the total value of delayed goods will be charged for each month or part of a month of delay.
  - (if the delay is by 3.75 months, LD will be calculated for 4 months at 8%)
  - LD is chargeable only if delivery has been accepted after the delivery period. If the goods have not been accepted by the consignee, LD is not chargeable,
  - the maximum LD will be 10% (a cap has been placed on the amount of compensation).
  - If a supplier delay supplies upto five months he incurs a maximum LD of 10%.
- (b) **Quantum of LD if the contract has a Variation Clause:** If a contract contains a Variation Clause, for Price/ Exchange Rate/ Statutory variation of taxes and Duties, the value of the delayed goods is calculated after adjusting the base price of the contract with the escalation formula provided in the Variation Clause. LD is calculated on the price arrived at after applying the Variation Clause.
- (c) **LD in “entire” contracts with staggered Delivery:** In an “Entire” contract there is only one instalment. For example, a contract may have a delivery clause:
- “200 pieces to be supplied within 10 weeks.”***
- Here there is only one instalment, and it is an “entire” contract. The contract is completed when 200 pieces are delivered.
- The contract may have a supply rate, like this:
- “200 pieces to be supplied, within 10 weeks, at a rate of 20 pieces per week.”***
- In such a contract the supplier has been advised to deliver in weekly quantities of 20 pieces but definite dates have not been given for the weekly supply. Only an outer limit of 10 weeks is specified. This is also an entire contract.
- In this case, if the supplier delivers 18 pieces during the 3rd week and 22 pieces in the 4th week, he has delayed the supply of 2 pieces by one week, but he is still within the overall delivery period of 10 weeks, so LD will not be leviable. But if he delays supply after 10 weeks, LD will be leviable on the quantity delayed beyond 10 weeks.
- To sum up, in an entire contract, LD is levied on the quantity supplied after the delivery date for the entire contract, and for which the supplier is responsible.
- (d) **LD in “severable” contracts:** In a “Severable” contract delivery has been broken into more than one instalments, and delivery date for each instalment is stated in the contract. If the delivery clause is:

- (e) “200 pieces to be supplied as under, 1) 20 pieces by 01/7/22,
1. 20 pieces by 08/7/22,
  2. 20 pieces by 15/7/22,
  3. 20 pieces by 22/7/22,
  4. 20 pieces by 29/7/22,
  5. 20 pieces by 05/8/22,
  6. 20 pieces by 12/8/22,
  7. 20 pieces by 19/8/22,
  8. 20 pieces by 26/8/22,
  9. 20 pieces by 02/9/22”

This would form a “severable contract”. In this type of contract, each delivery instalment operates as a separate contract with its own last delivery date. Specifying last delivery date for each instalment is important because that makes a “severable” contract.

In the example given above, there are 10 individual contracts. For each instalment, the delivery date expires separately and has to be extended separately. Any instalment can be individually cancelled without affecting the others. Each instalment is billed and paid for separately. So also, LD is calculated separately for delayed quantity of each instalment.

- (f) Cases where Supplier is not responsible for the delay:

LD can be charged from a supplier only when the delay in supply is due to the fault of the supplier. There are cases where the delay is on account of the purchaser, such as:

1. the supplier can start manufacture only after the approved sample is obtained from the purchaser, and there is a delay in receiving the sample. The delay to the extent of delay by the purchaser will not be subject to LD,
2. the delay is due to some omission by the purchaser, (say, an error in the drawing which must be rectified before manufacture)
3. cases where the purchaser delays in supplying some raw material to the seller without which manufacture cannot start

In such cases, LD is not leviable for the period of delay by the purchaser.

- (g) **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 with consultation of associated Finance may be taken and justifications recorded.

- (h) **Exemption from LD:**

1. 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.

2. 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.

#### 1.5.4 Handling of Deliveries after expiry of Delivery Period

- (a) 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.
- (b) 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.
- (c) "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 the Procuring Entity. The goods are being retained without prejudice to the rights of the Government of India under the terms and conditions of the contract."
- (d) 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.
- (e) 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.

### 1.6 Breach of Contract, Remedies and Termination

- 1.6.1 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 Procuring Entity seriously.
- 1.6.2 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 Competent Authority may terminate a contract in the following cases.

(a) **Cancellation of Contract for Default**

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

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and
- ii) If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
- iii) If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
  - o Forfeiture of the performance security;
  - o 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
  - o However, the supplier shall continue to fulfil the contract to the extent not terminated.

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

(b) **Termination of Contract 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 Procuring Entity.

(c) **Termination of Contract for Convenience**

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the supplier for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from

which the termination will to become effective. This is not Procuring Entity's legal right– the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the 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.

(d) **Termination Due to Breach of Code of Integrity:**

The Code of Integrity has been defined in section 11 of the APP Act, 2017. It is applicable for officers and employees of the procurement entity as well as any other person participating in the procurement process directly or indirectly, which means bidders, suppliers, contractors, consultants, sub-contractors etc. All are required to maintain an unimpeachable standard of integrity both inside and outside their office.

In case of any breach of the code of integrity by a supplier, the procurement entity will give a notice of the breach and ask the supplier for an explanation (a reasonable opportunity to be heard). If the explanation is not satisfactory, the procurement entity may,

- forfeit or encash any security or bond submitted by the supplier;
- recover any payment made to the supplier with interest at bank rate;
- cancel the relevant contract and recover compensation for any loss incurred by the procuring entity;
- debar the supplier in participation in future procurements of the procuring entity for a period of three years

(e) **Force Majeure Condition:**

i) In contracts where the Force Majeure clause has been included, the occurrence of a Force Majeure Condition frees both the purchaser and the supplier from their obligations under the contract. The freedom from obligations remains till the Force Majeure condition persists.

ii) A Force Majeure (FM) means extraordinary events or circumstances beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrongdoing, predictable/seasonal rain and any other events specifically excluded in the clause).

iii) If any party to the contract cannot perform whole or part of its obligations under the contract for more than 90 (Ninety) days, either party may terminate the contract without any financial repercussion on either side.

## 1.7 Offences & Penalties

### 1.7.1 Interference with Procurement Process (Sec. 42 of APP Act, 2017):

- (a) Whoever is involved in following activities shall be punished with imprisonment for a term which may extend for five years and shall also be liable to fine which may extend to **five lakh rupees or ten percent of the assessed value of procurement**, whichever is less.

- i) Interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or
  - ii) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or
  - iii) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition; or
  - iv) intentionally influences any procurement entity or any officer or any employee thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement process; or
  - v) engages any former officer or employee of a procurement entity as an employee, director, consultant, or
  - vi) adviser or otherwise within a period of one year after such former officer or employee was associated with a procurement in which the employer had an interest;
  - vii) engages in any form of bid-rigging, collusive bidding or anti-competitive behaviour in the procurement process; or
  - viii) intentionally breaches confidentiality referred to in section 49 of the Act for any undue gain,
- (b) In following cases the bidder shall, in addition to the recourse available in the bidding documents or the contract, be punished with a **fine which may extend to fifty lakh rupees or ten percent of the assessed value of procurement**, whichever is less.
- i) withdraws from the procurement process after opening of the financial bids; or
  - ii) withdraws from the procurement process after being declared the successful bidder; or
  - iii) fails to enter into a procurement contract after being declared the successful bidder; or
  - iv) fails to provide performance security or any other document or security required in terms of the bidding document after being declared the successful bidder, without valid grounds,
  - v) This means effectively that the bidder will lose his bid security and along with the fine as proposed above

#### 1.7.2 Vexatious Appeals or Complaints (Sec. 43 of APP Act, 2017)

- (a) “Whoever intentionally files any vexatious, frivolous or malicious appeal or complaint under the APP Act, with the intention of delaying or defeating any procurement or causing loss to any procurement entity or any bidder, shall be punished with a **fine which may extend to twenty lakh rupees five percent of the value of procurement, whichever is less.**”



- (b) A vexatious complaint is one that is pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted or cause problems or even bring financial costs (such as engage a defence lawyer) to their defendant or respondent. Such complaints have little chance of succeeding in law.
- (c) A frivolous complaint is without any legal merit, made in bad faith for the purpose of harassing the procurement entity or its personnel.
- (d) A Malicious complaint is one that is filed without an adequate basis and for an improper purpose, such as harassing the defendant, ruining another person's reputation, or to knowingly place the blame on someone other than the actual wrong doer.

### 1.7.3 Abetment of certain offences:

- (a) Whoever abets an offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punished with the punishment provided for the offence.
  - *Abetment means the action of instigating, encouraging or promoting a person into committing an offence. It can also mean aiding the offender while he is committing the offence. This section imposes an equal penalty on whoever abets the offender.*
  - *"in consequence of" means "because of" or "as a result of". The penalty is imposed even if the offence was committed with or without the influence of abetment.*

## Procurement of Works, Goods and Non-consulting Services

### 1. Obligations relating to value of Procurement (Sec. 8 of APPA, 2017)

#### 1.1 Due Approval by Appropriate Authority

- (a) Every procuring entity shall initiate the procurement process only after technical, administrative and budgetary approvals are accorded and after obtaining approval of the authority which has the necessary financial powers to initiate such value and category of procurement as per the Rules and Guidelines made under the Act.
- (b) However, the procuring entity to save time, may initiate advance actions of procurement in anticipation of administrative and budgetary approvals, under certain circumstances and following procedures prescribed with the approval of an authority designated in this regard in the Rules made under the Act, provided that the procurement process shall stop short of any financial or contractual commitment, even in such cases unless administrative and budgetary approvals have been obtained.
- (c) The Government shall lay down the circumstances, procedures and designated authority for initiating such advance procurement under para 1.1(b) above.

**1.2** Each procuring entity shall maintain a register of works and order of supplies of goods and services, liabilities incurred against these works and orders of supplies, liabilities cleared and liabilities awaiting clearance, in a format as may be prescribed, provided that Government may make Rules not to sanction new works if the outstanding liabilities in a Department exceed a limit as may be prescribed.

**1.3** Procuring entity shall neither divide or bulk its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations as given under para 1.1(a), 1.1 (b) and 1.1(c) above or to limit the competition among the bidders or otherwise avoid its obligations under the Act, provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide or bulk its procurement into appropriate packages prior to invitation of Bid.

#### 1.4 Obligations relating to procurement and value thereof (Rule-8 of APPR, 2020):

**1.4.1** It shall be obligatory for every procurement entity to obtain all the required approvals and sanctions as prescribed in the Assam Financial Rules, 1939, Delegation of Financial Power Rules, 1999 or other relevant Acts, rules and orders as amended up to date before initiating any procurement. In case of procurement of works, this shall, inter alia, include due Administrative approval and Technical sanction. In case of goods and services, these shall, inter alia, include due approval of rates through due process.

**1.4.2** No authority or official shall initiate any procurement unless such authority or official has been delegated with the necessary financial powers for the particular subject matter of procurement and the value or cost thereof under the relevant Delegation of Financial Powers Rules, by whatever name called, and budget provision or funds for the purpose is clearly available for the purpose.

- 1.4.3 In case of procurement of works, no work order or letter of acceptance of bid shall be issued before Administrative Approval for such procurement has been duly accorded in compliance with the existing rules, and orders that may be issued from time to time as laid down in the Assam Fiscal Responsibility and Budget Management Act 2005, (Act No XXVII of 2005).

*Explanation: Bids for works may be invited only after Administrative Approval (A/A) for the work based on plan and estimates duly prepared as per duly notified Schedule of Rates and market analysis as applicable as well as the Technical Sanction (TS) thereon has been duly accorded by the competent authorities.*

- 1.4.4 In case of procurement of goods and services, no supply order or letter of acceptance of bid shall be issued before financial sanction for such procurement has been duly accorded in compliance with existing rules and orders that may be issued from time to time as laid down in the said Act of 2005. Bids may be accepted only after such financial sanction has been duly accorded.

- 1.4.5 Any advance action for procurement for works by any procuring entity in terms of clause (b) of sub-section (1) of section 8 of the Act ( i.e. Para 1.1(b)), shall be strictly limited to feasibility studies, design, soil testing, deciding quality control measures, framing of plan and estimates or detailed project report, preparation of specific bidding documents and other necessary preparatory work but bids shall be invited as prescribed only after obtaining approval of the next higher authority. Further, the bids shall be opened only after Administrative Approval has been duly accorded for such procurement by the competent authority;

- 1.4.6 Any such advance action for procurement of goods and services by any procuring entity in terms of clause (b), of sub-section (1), of section 8 of the Act shall be strictly limited to all preparatory work like identification of quality and other relevant specifications or terms and conditions, preparation of specific bidding documents and finalisation of rates by inviting appropriate bids thereof as per due process but no bid shall be accepted or supply order issued before sanction has been duly accorded for such procurement by the competent authority.

- 1.4.7 Subject to the provisions in this rule, the Head of the concerned Administrative Department, with the views of the concerned Financial Advisor and the Head of the concerned Department, with the views of the concerned Finance and Accounts Officer shall be the designated Authority up to their respective financial powers specified in the relevant Delegation of Financial Power Rules,1999 as amended from time to time for approving such advance action in terms of clause (b) of sub-section (1) of section 8 of the Act, in respect of procurement entities specified in clause (a) of sub-section (2) of section 3 of the Act. In respect of the procurement entities specified in clauses (b) to (f) of sub-section (2) of section 3 of the Act, the Head of the concerned Body with the concurrence of the Head of the Finance of that Body shall be such designated Authority: Provided that the State Government may, by Notification, designate any other Authority or Authorities for approval of such advance actions or prescribe further conditions or guidelines for such advance action.

- 1.4.8 In terms of the provision of sub-section (2) of Section 8 of the Act, the Finance

Department, having regard to the position of State finances and matters incidental thereto or for prudent fiscal management, may prescribe specific limits of outstanding liabilities for the different procuring Departments or the different procuring entities under them beyond which no new procurement shall be taken up or administratively approved or sanctioned by them.

No procurement entity shall divide or bulk its procurement after bids have been invited for the purpose under any circumstances and violation thereof shall be deemed as wilful dereliction of duty constituting grave misconduct under the relevant conduct rules.

## 2. Procurement of Goods vs. Procurement of Works

Procurement of Goods and Works are not very identical, in many ways they are different from each other. Some of these differences are listed in the table below:

S. No.	Procurement of Goods	Procurement of Works
1	Normally, short execution period	Normally, longer execution period
2	Manufacturing is done in the manufacturer's facility.	Work is executed on the construction site itself.
3	Ownership on the goods is transferred at the point of delivery to the purchaser or its consignee.	Ownership is transferred on completion of the construction and handing over of the project as per contract.
4	Payment is made in one or two instalments.	Running payments are normally made against running bills raised by the contractor depending on the work progression.
5	Inspection is normally done of final products. In exceptional cases, stage inspection is done during the process of manufacturing.	Site visit, inspection and quality assurance is done on an ongoing basis till such time the work is completed and handed over.
6	The make, model, source and technical specification of the goods to be supplied is finalised before signing of contract.	Detailed specifications of the materials to be used, process to be followed, drawing, design and other quality specifications are agreed/decided before signing of the contract

S. No.	Procurement of Goods	Procurement of Works
7	Important Terms and conditions: a. Design detailing is normally by the supplier.	Important Terms and conditions: a. Generally, Design/Drawings are supplied by the procuring entity. Detailed drawings by the contractor. However, many other variants are also available such as design-build, design-build-operate, performance based, EPC etc. b. Concept of procuring entity's Engineer to administer the contract on behalf of Procuring entity. c. Concept of sub-contractor(s)/nominated sub-contractor/day work schedules. d. Procuring entity as Principal employer has obligations towards migrant labour and uncertified labour engaged by the contractor. e. Procuring entity inspects, gives advances against receipt of material at site and stage inspections are carried out. f. Contractor mobilises the majorequipment and otherinfrastructure at site. g. Procuring entity is involved in elaborate planning andmonitoring. h. Constructed works are covered by Defect liability period.
	b. No concept of procuring entity's representative (Engineer)	
	c. No concept of sub- contractor(s)/nominated sub- contractor/day work schedules	
	d. Procuring entity has no responsibility towards labour engaged in manufacture.	
	e. Procuring entity has little or no involvement in use of raw materials and stages of manufacture.	
	f. P&M are at the manufacturing facility of the supplier	
	g. Production planning is done by manufacturer without any involvement of the procuring entity.	
	h. Product is governed by Warranty/ Guarantee period.	

### 3. Matters Relating to Procurement of Works

#### 3.1 Matters Relating to Procurement of Works

Obligations of the procuring entity before start of the work also **include**

- (a) Necessary approvals (Administrative & Technical) and Financial sanctions, as applicable, have been obtained;
- (b) Necessary Statutory Approvals/ Clearances from concerned Local Bodies & Statutory Authorities like Municipal Corporation, Electricity Board, Fire Department, Pollution Control Board, Environmental Authorities, Forrest and Wild-life authorities etc. (for e.g. removal of trees, re-locating utilities; rehabilitation and resettlement of persons; blasting permission etc.) are in place; and Availability and readiness of (i) Land (or construction site) free from any encroachment or dispute and (ii) of the required auxiliary services like roads, power, water, solid & liquid waste disposal system and other civic services.

#### 3.2 Types of Works Contract

##### 3.2.1 Admeasurement (unit price or rate) Contract

- a. This type of contracting has traditionally been used for civil works such as infrastructure, buildings, hydropower, roads etc. The Procuring Entity does nearly all the design (except normally for construction details, reinforcement, etc.).

- Engineer administers the Contract, monitors the construction work and certifies payments
  - Procuring Entity is kept fully informed and can make variations.
  - Payments are made according to bills of quantities or lump sums for approved work done.
- b. The Contractor is responsible for execution of works as per design given to it, and is paid based on its 'inputs' to the works. The result is that the Contractor has the wrong incentive, which is to carry out the maximum amount of works, in order to maximize its turnover and profits. Even when work is carried out according to plan, the overall outcome depends on the quality of the design and the Contractor is not accountable for it. Almost all risks related to design, ground conditions, cost overrun etc., are borne by the Procuring Entity.
- c. The contractors are required to quote the rates against each item in the Bill of quantities (BOQ) provided by the Procuring Entity. Payment is made periodically (normally monthly) at the rates set out in the contract for the measured quantities of items used for construction during this period.

### 3.2.2 Lump sum (Fixed Price) Contract

- a. This type of contracting has also traditionally been used in particular for various forms of construction where the Works are well defined and are unlikely to change in quantity or specification and where difficult or unforeseen site conditions (for example, hidden foundation problems) are unlikely. The concept of priced "activity schedules" is used, to enable payments to be made on the basis of percentage completion of each activity.
- b. The contractors are required to quote a lump sum fixed price, and the price is deemed to include all elements of cost. Lump sum contracts are easy to administer because there is a fixed price for a fixed scope, and payments are linked to clearly specified outputs/ milestones. A Schedule of Rates (SOR) may also be specified in the contract to cost any variations to the contract.
- c. The contractor has the incentive to complete the contract faster and make it less costly by saving on resources employed. This may result in reduced quality of materials and workmanship, and would need to be carefully watched by the Engineer.

### 3.2.3 Percentage Rate Contract

- a. This type of contract works best when the Work does not involve major design process and directions. It can be used for small and routine works for which estimates can be made based on available schedule of rates, and for repair works e.g. storm water drainage, water supply and sewer lines etc.
- b. The contractors are required to quote rate on percentage basis i.e., above or below the total estimated cost. Bills are prepared at the estimated rates for individual items and the percentage excess or less is applied to the gross amount of the bill. The Contractor is thus paid for the measured inputs to the Works.



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

- a. The Engineering, Procurement and Construction (EPC) is justified where the Contractor is to take full responsibility for investigations, design and construction normally for a fixed price. 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. Procuring Entity specifies only the outline design, and the Contractor has the freedom to design and plan the construction using best practices, and provides whatever is necessary for delivering the fully-equipped facility, ready for operation (at the “turn of the key”).
- b. Some of the benefits include: (a) certainty about a project’s final costs and time for execution; (b) lesser supervision and gain from innovations by the Contractor; reduced lead time, as time for preparation of detailed engineering design is saved; and (d) single point of responsibility as the Contractor takes total responsibility and has the necessary flexibility in selection of design, methodology, subcontractors, and can take advantage of procurement packaging and value engineering opportunities. (c) Some of the limitations compared to execution to the Procuring Entity’s detailed design include: (a) higher upfront cost due to transfer of risks to the Contractor (risk premium); (b) need to issue change orders if design or scope is to be modified;
- c. lesser number of bidders, as cost of bid preparation is high due to efforts involved in preparation of preliminary drawings, and due to bidder’s capacity to take the risks, (d) the contractor has the incentive to complete the contract faster and save costs which may result in reduced quality; and (e) risk of default by the Contractor due mainly to low profit margins and weak project controls.

### 3.2.5 Design-Build Contracts

- a. The Design-Build approach is justified (a) when the scope of works is complex, (b) the need for innovation in design is paramount, (c) the Procuring Entity is either uncertain that its own design is the best solution or does not have the resources to design in-house, and hiring of specialized design Consultant has been considered and found to be not justifiable, or (d) competition among the bidders for the design is justified due to the benefits in availing better technology and lower life cycle costs.
- b. Some of the benefits of Design and Build approach include (a) reduced lead time, as time needed to hire a design consultant and for preparation of engineering design is saved, (b) single point of responsibility, as both the design and construction are performed by the contractor, and (c) the contractor may bring creative solutions which optimize the design.
- c. Some of the limitations compared to design by the Procuring Entity include (i) the Procuring Entity loses some control on the design process. While some design elements and standards may be specified by the Procuring Entity, typically the contractor is given flexibility in design, and (ii) the contractor has the incentive to complete the contract faster and make it less costly

which may result in reduced quality of materials and workmanship. This and would need to be carefully watched by the Engineer.

### 3.2.6 Design-Build-Operate Contracts

- a. Some of the benefits of Design, Build and Operate approach include:  
(a) single point of responsibility; the design, the construction and the operations are performed by the same contractor, (b) access to operations and maintenance expertise, (c) stronger incentives to deliver a reliable and durable facility because the Contractor would carry
- b. the financial consequences of poor design and workmanship, (d) better value for money in the long term because the contract is awarded to the Bidder offering the lowest combined capital and operating cost (unlike a design-build which is awarded on the basis of lowest initial capital cost), and (e) superior incentives for innovation: for example the contractor may be able to develop a better design as a result of value engineering and having regard for the operational as well as construction costs of the Works.

Some of the **limitations** of the Design Build Operate approach relative to having separate contracts for design and build (or of having a single design-build contract) include: (i) the Procuring Entity may lose some control of the design process: typically the DBO contractor is given flexibility in the selection of suitable design and process technology, (ii) the Employer loses direct control over operations and maintenance activities, and (iii) there may be a loss of future flexibility as the Employer is bound into a long term relationship with the Contractor.

- 3.2.7 **Other types of Contracts:** include Performance based contracts, Design Build Operate Transfer (DBOT) contracts, Build Operate Transfer (BOT) contracts, Build Own Operate Transfer (BOOT) contracts, Build Own Operate (BOO) contracts either under Public Private Partnerships (PPP) mode or otherwise.

## 4. Matter relating to procurement of Goods

### 4.1 Fundamental Principles of Public Procurement

- 4.1.1 As per Section 4 of the APP Act 2017, in relation to a public procurement, the procuring entity shall have the responsibility and accountability to ensure
- (i) effective and timely achievement of the planned outcomes of the procurement without excessive cost over-run;
  - (ii) transparency (including consistency, objectivity, predictability, openness), fairness (including appeal rights), equality (including non-discrimination) in relations with the bidders;
  - (iii) professionalism, economy and efficiency, from official involved in process; compliance with the code of integrity in public procurement as laid down by the State Government under section 11 of the Act by officer or employee of a procuring entity or a person participating in a procurement process.
- 4.1.2 Subject to the provision of sub-section (3) of section 3, every procuring entity shall carry out its procurement in accordance with the provisions of this Act and

the rules and guidelines made there under. *[Sub-section (3) of section 3 covers the exception permitted for carrying out procurement, financed under assistance from multilateral development banks etc, in accordance with the procurement procedures stipulated in terms of such assistance or agreement]*

#### 4.2 Life Cycle Cost and Value for Money Concept

- 4.2.1 The concept of price or cost has been further refined into Total Cost of Ownership (TCO) or Life Cycle Cost (LCC) to take into account not only the initial acquisition cost but also cost of operation and maintenance during the lifetime, and residual or end of life value at the end of its life.
- 4.2.2 Similarly, the concept of quality is linked to the need and is refined into the concept of utility/value. These two, taken together, are used to develop the concept of Value for Money (VfM) which means the effective, efficient, and economic use of resources, which may involve the evaluation of relevant costs and benefits, along with an assessment of risks, non-price attributes (e.g. in goods and/or services that contain recyclable content, minimise waste and greenhouse gas emissions, conserve energy and water and minimize habitat destruction and environmental degradation, are non- toxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. In public procurement, VfM is achieved by attracting the widest competition; by way of optimal description of need; development of value-engineered specifications/ Terms of Reference (ToR); appropriate packaging/slicing of requirement; selection of an appropriate method of procurement and bidding system.

#### 4.3 Terms of Delivery and passing of the title of the Goods

- 4.3.1 **INCOTERMS** is an abbreviation for International Commercial Terms. These are published by the International Chamber of Commerce (ICC) with its Headquarters in Paris and are widely used in international commercial transactions. They are a set of rules which define the responsibilities of sellers and buyers for the delivery of goods under the contracts for domestic and international trade. They apportion transportation costs and responsibilities associated with the delivery of goods between buyers and sellers and significantly reduce misunderstandings among parties to the contract. Thus, they minimise trade disputes and litigation.
- 4.3.2 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 (FOB, CFR, CIF etc.). 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.

4.3.3 In use since 1936, Incoterms have been revised in 2020. 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, where the buyer takes full responsibility from point of departure to the other extreme, where the seller is responsible all the way through delivery to the buyer's location.

4.3.4 **Incoterms (options) that apply to any mode of transport**

1. **EXW** – Ex Works (insert place of delivery) – In EXW, the seller delivers the cargo (container full of goods) to the buyer at his wire house, in which the responsibility of packaging lies with the seller, and all subsequent responsibilities have to be handed over to the buyer.
2. **FCA** – Free Carrier (Insert named place of delivery) – In this type of term, the goods seller is responsible for the delivery of the goods at a specified destination. In this, the seller is originally responsible for all export details and the buyer is responsible for destination operations and select origin operations.
3. **CPT** – Carriage Paid to (insert place of destination) – Under this, the seller pays for the carriage of goods to a place. Goods are considered delivered only when the goods are first handed over to the main carrier. So that the risk is transferred to the buyer of that carrier in place of cement in the country of export.
4. **CIP** – Carriage and Insurance Paid To (insert place of destination) – The place also has to be mentioned in this, after that the responsibility of the seller is only up to that place.
5. **DAP** – Delivered at Place (insert named place of destination) – Under this term, all the responsibility lies with the seller, the buyer has to pay only duty and tax. Suppose the buyer has chosen some other port instead of choosing the delivery place of his warehouse, then the buyer will take the responsibility only there.
6. **DPU** – Delivered at Place Unloaded (insert of place of destination) – It is mandatory to know the name of the place – the place of delivery, where the seller has to unload. The seller is required to deliver the goods to the buyer's redress after the request has been made by the inbound mode of transport.
7. **DDP** – Delivered Duty Paid (Insert place of destination) – In this term, the seller has to pay all the duties and taxes, but at the time of final unloading, only the buyer has to pay, these incoterms are used by those who have an office in the buyer's country, so that they can Handle things easily to his customers.

4.3.5 **Incoterms (Options) that apply to sea and inland waterway transport only**

1. **FAS** – (Free Alongside ship) These incoterms are used only for Ocean Freight, it is very important to write the name of Sea Port, Seaport belongs to the country of the exporter. This type of term is used only for bulk cargo i.e. it is not used in container cargo.

2. **FOB** – Free on Board (insert named port of loading) – Free Alongside Ship (insert name of port of loading) – Free On Board FOB is a shipment that is used so that the seller or buyer will not be liable for any goods damaged or destroyed during shipping. In this the buyer pays the cost for shipping from the factory and is only responsible for the damage to the goods during transportation. And till the time the goods do not reach the buyer, the loss and risk remains on the seller.
3. **CFR** – Cost and Freight (insert named port of destination) – In this, the seller will have to freight up to the port of the country. The responsibility of insurance of cargo in CFR is not that of the seller.
4. **CIF** – Cost Insurance and Freight (insert named port of destination) – In this, the responsibility of insurance lies with the seller, and the buyer has to take the responsibility of unloading, in this the responsibility of ocean freight and insurance lies with the seller, and the delivery point of the seller is also known.

#### 4.3.6 Defined terms in Incoterms

- (a) **Delivery:** Defines the point at which the risk of loss or damage to the goods is transferred from the seller to the buyer.
- (b) **Arrival:** The point at which payment is made to the cargo carrying vehicle.
- (c) **Free of charge:** It is under the obligation of the seller to deliver the goods at a designated place for transfer to a vehicle.
- (d) **Carrier:** When any person who undertakes to carry out the performance of transport by any carriage by a combination of roads, rails, seas, etc.
- (e) **Freight Forwarder:** A firm that assists with or makes shipping arrangements.
- (f) **Terminal:** Any location such as a warehouse, container freight, rail or air cargo terminal.
- (g) **For clearance for export:** To file export declaration of shipper and obtain export permit

### 5. Matter relating to procurement of Non-consultancy Services

- 5.1 **Definition:** As per Rule 25 (1) of APP Rules “Non-Consulting Services,” are services different from “Consultancy Services,” and defined as any subject matter of procurement, other than goods or works except those consequential or incidental to that service or subject matter, that involve physical, measurable deliverables or well defined outcomes, where performance criteria or standards can be clearly identified and consistently applied. These services include maintenance, transportation, hiring of vehicle, outsourcing management of building facilities, management, security, catering, reprography, photocopier service, janitor, office errand services, drilling, aerial photography, video recording, satellite imagery, survey, mapping, Information Technology related services like website design, maintenance, etc.
- 5.2 **Authority to procure Non- Consultancy Services:** A procuring entity who is who is otherwise competent under the relevant Delegation of Financial Power Rules,

may procure well defined essential non-consulting services in the interest of efficiency and economy in the meeting of a public need and, while doing so, set guidelines containing detailed instructions and procedures to be followed by the service providers for such non-consulting services.( Rule 25 (9))

### **5.3 Procedures to be followed for Procurement of Non-consulting Services:**

#### **5.3.1 Identification of the required Non-Consultancy Service:**

The procurement entity shall clearly identify the exact nature of the non-consultative service required in order for a public need to be met, and define the services and tasks involved therein that are to be delivered by the non-consultancy service provider together with the performance or quality parameters thereof.

#### **5.3.2 Preparation of Bidding Document:**

The procuring entity shall prepare the relevant bidding documents containing details of the non-consultancy service which shall, inter alia, contain:

- (a) The details of the work or service to be performed by the service provider;
- (b) The facilities and inputs which shall be provided to the service provider by it;
- (c) Eligibility and qualification criteria to be met by the service provider for performing the required service;
- (d) The statutory and contractual obligations to be complied with by the service provider;
- (e) The code of conduct and other norms to be followed while providing the service;
- (f) The time, dates and place for submission and opening of bids;
- (g) The criteria for evaluations of bids and terms of contract.

#### **5.3.3 Invitation of Bids:**

The procuring entity shall publish notice inviting bids in the State Public Procurement Portal. In case of an offline procurement, the procuring entity shall publish an abridged notice in newspapers indicating the address where details are available as prescribed. Not less than three weeks' time counted from the date of publication of last advertisement shall be provided for submission of bids to ensure wide competition and sufficient time for preparation of bids.

#### **5.3.4 Evaluation of Bids Received:**

The Bid Evaluation Committee shall evaluate segregate, rank all responsive bids and select the successful responsive bidder for execution of the contract as specified in the bidding document. Late bids shall not be considered.

#### **5.3.5 Monitoring the Contract:**

The procuring entity shall involve itself throughout in the conduct of the non-consultancy contract and continuously monitor the performance of the service provider in terms of the contract.



## PROCUREMENT OF CONSULTING SERVICES

### 1.1 Consultancy Services

#### 1.1.1 Definition of Consulting Services

“Consulting Service” means any subject matter of procurement other than goods or works, except those consequential or incidental to such service or subject matter, and includes professional, intellectual, technical and advisory services or any other service classified or declared as such by a procuring entity but does not include re-engagement of a retired Government servant, not related to a specific project. There is however no bar on hiring of retired Government Servants as consultants. These services typically involve providing expert or strategic advice, e.g. management consultant, policy consultants, communications consultants, training and development consultants, organisational analysis and development, restructuring, advisory and project related consulting services which include feasibility studies, project management, engineering services, etc. (*Explanation-1 to Rule 25 (1)*)

#### 1.1.2 Consulting Service vs. Goods & Works

As you are aware, the subject matter of procurement can be classified into Goods, Works, or Services. Services can be further classified into Consulting Services and Non-Consulting Services. In this Module, we shall learn about Consultancy Services.

When we procure Goods or Works, we get a tangible object, say computer, medicines, seeds, a building, a dam, waterworks and so on. Tangible, because we can see these objects and touch & feel them. There are items such as software, which are available as off-the-shelf items, are also classified as goods. However, software designing, development, customization, etc., are classified as services.

“Consulting Services” are also intangible in nature, can’t be measured or defined in physical or measurable terms unlike other subject matters of procurement. These are services of advisory or intellectual in nature, rendered by an individual consultant or by a consulting firm having adequate skill and expertise in respective domain.

Here lies the challenge. Goods and Works can be specified in detail and can be measured when they are delivered.

**For example,** *if procurement is being made of office furniture, then the technical and quality specifications can be specified in the bidding document, and the same can be accurately verified at the time of delivery.*

*Similarly, a building can be specified in detail in drawings and specifications and can be measured when it’s being constructed or when construction has been completed. On the other hand, an advisory or other consulting services cannot be specified in obsolete measurable terms unlike goods or works.*

Because of these differences in nature and characteristics of Consultancy Services from other subject matters of procurement (i.e. Goods and Works), a different approach in its procurement is required. The APP Act, 2017 and Rules formed thereunder do prescribe specific procedures for procurement of Consulting Services. The content and description of the bidding document, method of selection and monitoring of

performance in case of procurement of consulting services are different from other procurements. Procedures for procurement of consulting service are explained hereunder.

### 1.1.3 Principles for procurement of Consultancy Services:

The following principles are relevant to the procurement of Consultancy Services:

- a) Procurement of the services should be justified,
- b) Scope of Work, Terms of Reference, Deliverables, Schedule of Work, etc. must be clearly defined,
- c) Equal opportunity should be provided to all qualified consultants to compete,
- d) Engagement of the consultant must be economical and efficient,
- e) Transparency and Integrity should be maintained in the selection process,
- f) consultants selected should be of high quality

The consultant is required to provide professional, objective and impartial advice, at all times holding the Procuring Entity's interest paramount, strictly avoiding conflicts with other assignments or his/its own corporate interests and acting without any consideration for future work.

## 1.2 Types of Consulting Contract

### 1.2.1 Types of Contracts

There are different basis for linking payments to the performance of the consultant. Which is called types of contracts— each having different risks and mitigation measures. Proposals are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value for Money (VfM) with due regard to the nature of assignment. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non- performance/failure of the contract. Each type of contract is described briefly in subsequent paras and criteria are suggested for their adoption along with risks and mitigation measures. Mostly used types of contracts are:

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

### 1.2.2 Lump-sum (Firm Fixed Price) Contract

The Lump-sum (firm fixed price) contract is the preferred form of contract and under normal circumstances; the Procuring Entity shall use this form of contract. Consultant's proposal is deemed to include all prices – no arithmetical correction or price adjustments are allowed during evaluation. Lump-sum consultancy contracts are easy to administer because there is fixed price for a fixed scope and payments are linked to clearly specified outputs/milestones/ deliverables such as reports, documents, drawings, bills of quantities, software programs and so on. In view of risks mentioned

below this type of contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures and so forth.

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

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

In Time-based (Retainer-ship) contracts payments are based on agreed hourly, daily, weekly or monthly rates for staff (who in consultancy contracts are normally named) and on reimbursable items using actual expenses and/or agreed unit prices. These are also called as retainer ship contracts, since the consultant 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.

Risk	Mitigation
The quality and scope of the Output/deliverables as in Lump-sum Contracts, is not linked to the payment. There may be tendency for the consultant/service provider to cut corners on quality, scope and timing of the output/deliverables by saving on resources employed. Disputes may arise due to different possible interpretations of quality and scope of assignment.	The contract should include provision for evaluation of quality and scope of deliverables and certificate for its acceptability may be recorded. Payments should be released only against such certificates.

Performance in each time period is not linked to the payment. There may be tendency for the consultant/service provider to use paid staff in a dilatory and un-productive manner.	Contracts need to be closely monitored and administered by the 'Procuring Entity' to ensure that the progress of assignment is commensurate with the time spent and that the resources for which payment is claimed have actually efficiently and productively been deployed on the assignment during the period. A system of monthly reporting of pay-outs and quantum of work achieved by the consultant to CA should be instituted to enable supervision.
Time and Cost over-run is a major risk in Time-based contracts, as the payment is based on time and delay may result in unanticipated benefit to the consultant and the assignment may get delayed.	This type of contract should include an upper limit of total payments to be made to the consultants/service providers for the assignment to safeguard against excessive prolonging of time and payments. After this limit is reached, or the period of completion is exceeded, CA should review justification for extension of the contract.

#### 1.2.4 Per centage (Success/Contingency Fee) Contract

Per centage (Success/Contingency Fee) contracts directly relate the fees paid to the consultant 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 who have quoted the lowest per centage while the notional value of assets is fixed.

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

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

#### 1.2.5 Retainer and Success (Contingency) Fee Contract

In Retainer and Success (Contingency) Fees Contract the remuneration of the Consultant includes a retainer (time based, monthly payment) and a success fee (Per

centage based payment). The latter being normally expressed as a per centage of the estimated or actual Project cost. Thus, this type of contract is a combination of Time Based and Per centage Contracts.

In Retainer and Success (Contingency) fee contracts the remuneration of the consultant due to risks and mitigations discussed below, Retainer and Contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. It can also be used for assignments related to organisational restructuring/change.

Risk	Mitigation
All risks as applicable to both Per centage Contracts and Time Based contracts are encountered in this case.	Same mitigation strategies as in both Per centage and Time Based contracts may be adopted in this case.

### 1.2.6 Indefinite Delivery Contract (Price Agreement)

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

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

Risk	Mitigation
Risk of over-utilization: Indefinite Delivery Contracts are at risk of being over-utilized in excess of actual need since the scrutiny of service need may not be as intense as in case of other types of contracts.	The need assessment of utilized services should be subject to some scrutiny, to ensure that there is no abnormal unexplainable trend in utilization. Such contracts need to be closely monitored and administered by the ‘Procuring Entity’ to ensure that there is no indiscriminate or unwarranted usage and a maximum contract value may be laid down to keep control over usage and approval of CA may be obtained to extend it beyond such limit.  A system of monthly reporting of pay-outs and quantum of work achieved by the consultant to CA should be instituted to enable supervision. In thereport a monthly pay-out benchmark may be kept, above which the report may be required to be sent to a level above CA.

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

### 1.3 Types of Consultants

#### 1.3.1 Individual Consultant:

The consultant can either be an individual consultant or a consulting firm. An individual Consultant is a person who possesses specialised education, knowledge, skill, expertise, experience, or has access to significant resources in a particular field. A Consultant's job is to study the Client's situation and to provide required output, solution, expert opinion or advice in specific areas. Consultants often act as objective trouble-shooters and provide strategies solutions to the Client in the area it lacks knowledge and expertise to prevent/resolve problems and improve performance. Consultants can help organizations streamline operations, increase productivity, build revenue, reduce costs, and make overall functions more efficient across the organization. They also advise in organisational restructuring, mergers, acquisition, sale, etc.

#### 1.3.2 Consulting Firm

An organisation that provides consultancy services to Clients is known as a Consultancy Organisation or a Consulting Firm. These organisations employ persons with specialised knowledge and expertise on full-time or part-time basis and take up Consultancy contracts from the market. Often, when one consulting firm does not have the capability in a particular field, it associates with another consulting firm that has the expertise.

#### 1.3.3 Consortiums of Entities:

When more than one consulting firms come together to give consultancy services, the group is called a Consortium. Consortiums work for large projects where a diverse range of knowledge and expertise are needed, all of which may not be possessed by a single consultancy firm.



*For example, to set up and run a medical college (say on BOOT model) expertise in different field is required including construction, training, teaching, treatment, biomedical equipment management, finance, legal, etc. This diverse knowledge and expertise can be provided easily through a consortium.*

#### 1.3.4 Specialised Institutions:

Often Universities, Government Agencies and Professional Institutions/Bodies with specialised expertise, are hired for specific jobs. For example, IIT, IIMS, C-DAC, etc., can be hired for consulting services.

#### 1.3.5 Non-Government Organisations (NGOs):

NGOs are non-profit entities who operate outside of government influence in the field of social service. They work very close to the people and thus have deep knowledge and expertise in handling social issues and problems. They are hired for their expertise and experience in areas like Mother and Childcare, Women Empowerment, etc.

***Note:** From now on, for the purpose of our learning, the term “Consultant” will apply equally to both, Individual Consultants and Consulting Firms.*

### 1.4 Justification for Procurement of Consulting Services

1.4.1 One can question why Consultants are hired, especially in large organisations that themselves have many staff with a wide range of experience, where the ability to solve problems internally is substantial. There are compelling reasons even for large organisations to hire consultants, no matter what their own size is. They are:

- a) **Lack of in-house capability**, or inadequate in-house capability in a new field,
- b) **Expertise:** A consultant usually specialises in a narrow field, which means that he brings in-depth knowledge and vast experience of that field with him,
- c) **Independent Perspective:** A consultant is not an employee of the organisation, but an outsider, who sees everything with a non-prejudiced, independent eye, and provides a fresh perspective to the situation,
- d) Due to his experience of dealing with **multiple clients**, a consultant is in a position to share cross-organisation learning.
- e) Some consulting firms deal on a **global scale**, and hence can bring their global experience, and knowledge of best global practices to the table,
- f) **Cost-Effectiveness:** It is cheaper to hire a consultant for a limited time than to utilise a full- time staff for a specialised one-time job,
- g) By obtaining an external opinion **Conflict of interest** is avoided in many cases,
- h) Consultants are often hired to **bring about change**. Employees in any organisation are used to their working environment, and thus prefer “status- quo” instead of change. It takes an outsider, a consultant, to see problems objectively, and get changes made.

### 1.5 Planning for Procurement of Consultancy Services

1.5.1 The process of hiring consultancy services depends essentially on the complexity of the tasks to be handled by the consultant. These are the steps taken to plan for a consultancy:

- a) Procurement Proposal
- b) Cost Estimation
- c) Issue of Expression of Interest (Eoi)
- d) Preparation of Terms of Reference (ToR)

#### 1.5.2 **Procurement Proposal:**

When a department considers availing consultancy services for a particular work, it must first justify why it considers so, can the work not be done in-house, and what will be the specific advantages in hiring an outside party. A formal brief proposal is prepared which brings out the need and the justification for hiring consultants, considering requirements, in-house expertise/knowledge, new knowledge and experience being gained, training requirements, acquisition of expertise in new fields, urgency and importance of the work and so on. Specifically, the Procurement Proposal should bring out:

- a) Consultancy Services Required
- b) Advantages to be gained
- c) Reasons why external consultants are required
- d) Time for which consultancy is required
- e) Estimated cost of the consultancy

The procurement proposal is put up to the Competent Authority (CA) for in principle administrative approval. Thereafter budget sanction is taken and then the final sanction of CA is taken. Only after the final sanction, the other activities can be started

#### 1.5.3 **Cost Estimation:**

It is necessary to estimate costs with a fair degree of accuracy if the project is to be made successful. To do a proper estimation, the following items are considered:

- a) Number of Experts needed,
- b) Time for which each expert will be needed,
- c) Man-month rate for each expert,
- d) No of International and Domestic trips required, cost per trip
- e) Local Travel required
- f) Training costs
- g) Office space, electricity, support staff
- h) Cost of production of reports
- i) Taxes & duties
- j) A reasonable margin of profit
- k) Any expenditure required by the work, like field surveys, soil investigations, environment surveys, sociometric surveys and so on provision for contingencies

*The better the estimation of costs, the better will be the budget utilisation for the work.*

#### 1.5.4 Issue of Notice Inviting Expression of Interest for shortlisting

- a) After obtaining the approval of the competent authority on the Procurement Proposal, the procuring entity publishes a notice inviting “Expression of Interest” or EOI on the State Public Procurement Portal. If it is not published on the portal, an abridged notice can be advertised in newspapers giving the address of the website from where the whole text can be obtained.
- b) The EOI shall include, in brief,
  - (i) the broad scope of the work or service required,
  - (ii) inputs and assistance that shall be provided by the procuring entity,
  - (iii) eligibility and pre-qualification criteria to be met by the consultants including, experience in similar work or service,
  - (iv) the approximate time for completion and,
  - (v) any other information required, with a view to facilitating the submission of expressions of interest from the maximum number of consultants.
- c) The Consultant shall also be asked to furnish their comments on the objectives and scope of the services projected.
- d) Adequate time of not less than fourteen days shall be allowed for submission of EOIs. In procurements of consultancy services of simple and routine nature, below a threshold as notified by the Finance Department, shortlisting may be done without a formal published EOI, by preparation of a long list of potential consultants based on formal or informal enquiries from Organisations involved in similar activities.
- e) The Procuring Entity may shortlist at least three prima facie eligible and capable consultants from the long list. Procuring entities who do frequent procurement of consultancy services may consider preparing a panel of qualified consultants, after evaluation of their credentials. Even below such threshold, if the complexity of the project so justifies, a formal EOI may be advertised.
- f) The procuring entity shall shortlist prospective consultants who shall meet requirement on the basis of responses to the notice calling for Eoi received by it for further consideration. Generally, the number of shortlisted consultants should be between three to six. The specific “Terms of Reference” for the consulting services shall then be prepared for inviting proposals thereof from the shortlisted consultants.

#### 1.5.5 Preparation of Terms of Reference (TOR)

- a) The key document used in the selection process is the Terms of Reference (TOR). It explains the objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the consultant, expected results, and deliverables of the assignment. A comprehensive and clear TOR is important for the understanding of the assignment and its correct execution. A good TOR reduces the risk of unnecessary extra work, delays, and additional expenses for the Client. In addition, it helps reduce the risk of ambiguities during the preparation of proposals by the consulting firms, contract negotiation, and

execution of the services.

- b) Drafting the TOR requires expertise in the field of the assignment, as well as familiarity with the project background, knowledge of the terrain, the country. If the capacity to draft a good TOR is not available in-house, the Client should hire a subject matter specialist for just writing the TOR.
- c) The TOR normally comprise the following sections:
  - (i) Background & objectives
  - (ii) Detailed Scope of Work (including the task to be carried out and schedule of completion thereof).
  - (iii) Reporting Requirements (Final Output and/or Outcome required),
  - (iv) List of Key Professionals
  - (v) Responsibilities of Client and Consultant (including supports or inputs that shall be made available to facilitate the consultancy)

- d) **Background & Objectives:** The background of the assignment means giving the name of the Client, background, objective(s) & rationale for the project, the location(s) where work is to be done, and funding arrangements.

*For example, the objective of the consultancy work could be “... to improve the quality of education imparted by the school”, or “... to reduce the electricity consumption in the factory”. The rationale could be that the expenditure on this account is exceeding the allotted budget.*

- e) **Detailed Scope of Work:** This is a statement of the work to be done by the consultant, and the objectives to be achieved. It can describe the type, volume, and timeframe of the work to be done to achieve the objective(s). The activities to be done by the consultant are also described here, but it does not contain how” the consultant must do the work, i.e., the approach and methodology, because that is the consultant’s responsibility. Client can suggest the tasks required, their logical sequencing, and a timeline for their completion. Information can be clearly represented by a bar chart.
- f) **Reporting Requirements:** This section is a list of deliverables and reports which a consultant must submit during the consultancy period. From the reports, the Client can monitor the progress of the consultant’s work. Generally, the reports asked for are,
  - (i) Inception Report (at the start)
  - (ii) Progress Reports (generally Bi- Monthly/Quarterly)
  - (iii) Completion Report (at the end)

Apart from informing about the progress, reports help to keep the Client informed about the objectives achieved, problems faced by the consultants, the corrective measures required to be taken, or course-correction required, to achieve the end results.

- g) **List of Key Professionals:** The requirement of Key Professionals is specified in the case of large and complex projects, where the Client considers them vital for

the success of the task and wants to ensure that these specific professionals are made available by the consultant. The period for which the specialist is required is also mentioned in the TOR. In smaller projects, this list may be omitted.

The CVs of the Key Professionals are reviewed in detail, and scores are allotted to each of them. These scores are weighted and included in the Technical Score for the proposal.

*For example, Key professionals would be:*

- (i) Structural Design specialist (4 mths)
- (ii) Soil specialist (6 months)
- (iii) Interior Design Specialist (2 months)
- (iv) Air-conditioning Specialist (1 month) and so on.

- h) **Responsibilities of the Client and the Consultant:** The responsibilities of the two parties are clearly defined to avoid problems during execution. It helps the consultant in knowing what he will get from the Client so that he prepares a better proposal.

*For example, on the Client's part, it can include a list of facilities such as, office space, secretarial assistance, computers, printing facilities, internet services etc., which would be provided to the consultant.*

- i) **Finalisation of TOR:** The initial cost estimation and the Terms of Reference are reviewed together at this stage, to make sure that the work described in the TOR can be carried out within the estimated cost and budget provision.

If the budget is inadequate, then either more money is sought, or the TOR requirements reduced to fit the budget. If the budget is surplus, then increasing the scope of work/activities may be considered. Several iterations may be required to finalise the TOR.

## 1.6 Procedure for Procurement of Consultancy Services

### 1.6.1 Preparation and issue of RFP

- a) Subsequent to the shortlisting of the prospective bidders are done by the procuring entity either through EoI process or otherwise, the detailed ToR of the Consulting assignment is developed as mentioned in above paras. While finalising the ToR the comments, if any, furnished by the applicants in the EoI stage, should also be taken in to consideration. The ToR has to be finalised before the RFP is prepared as ToR shall form part of the RFP document. RFP document has the similar purpose that of the "Bidding/Tender Document" as prepared in case of procurement of Goods and Services.
- b) The Request for Proposal (RFP), calling for the detailed technical and financial proposals shall be issued to all the shortlisted consultants for obtaining offers from them for the required consultancy service wherein the Terms of Reference for the consultancy shall be clearly and precisely defined. The RFPs shall ordinarily be called in two envelopes system, with the technical and financial bids submitted separately. The RFP shall contain:-

- (i) **Letter of Invitation:** This letter gives brief information about the assignment and invites the shortlisted consultants to submit their proposals.
- (ii) **Information about the assignment:** this section gives more information about the assignment, its title, funding, last date/time/place for submitting the proposal, number of copies to be submitted, time for which the proposal must be valid after the proposal opening date and the method of evaluation,
- (iii) **Terms of Reference, Eligibility and pre-qualification criteria** (in case these have not been ascertained through EoI)
- (iv) **Method of Evaluation of the Technical Proposal**, maximum marks allotted to various evaluation criteria and sub-criteria, and Minimum Technical Score required to qualify technically, if applicable,
- (v) **Method of Evaluation of the Financial Proposal**, how corrections will be applied in the financial proposal, and the formula for calculating the financial score in QCBS,
- (vi) **Standard formats** for Technical and Financial proposals,
- (vii) **Proposed Terms and Conditions of the Contract**
- (viii) **Type of Contract** which will be applicable, its terms and conditions,
- (ix) **Draft Contract including Conditions of Contract (General & Special)**
- (x) **Review:** The procedure proposed to be followed for a mid-term review of the progress of the work and review of the final draft report

#### 1.6.2 Submission, Receipt and Opening of Proposals

- (a) **Submission of Proposal:** In case of offline procurement, the bidder shall submit the technical bid or proposal in a sealed envelope marked “Technical Proposal” and the financial bid or proposal in a different sealed envelope marked “Financial Proposal,” both of which shall be put in a bigger outer envelope which shall also be sealed. The bid shall be submitted by the bidder by hand or post or delivered to the concerned procuring entity or its authorised officer or dropped in the drop box earmarked for the purpose on or before the date and time fixed for submission of bid proposals.
- (b) **Receipt of Proposal:** The bids shall be received as prescribed in sub-rule (6) of rule 23 of these rules relating to receipt of bids. The officer authorised by the procurement entity to receive proposal shall issue a receipt for each such proposal received and record such receipts in the register as prescribed therein. Late bids shall not be considered and returned as prescribed in rules.
- (c) **Opening of Proposal:** The Bid Evaluation Committee notified for the purpose shall first open the technical bid contained in the sealed envelope marked “Technical Proposal” at the appointed place on the specified date and time in the presence of the bidders who choose to be present. The sealed envelopes containing the financial bids marked “Financial Proposal” shall be kept in safe custody under lock and key by the procuring authority till the time and date of financial proposal opening. Similarly, in case of online submission, first the technical bid shall be opened electronically by the authorised official for evaluation by the committee.



- (d) Other provisions relating to submission, receipt and opening of bids in case of e-Procurement or offline procurement shall, mutatis mutandis, apply to the procedure for procurement of consultancy services in general.

#### 1.6.3 Appointment of Evaluation Committee

- (a) As per the Assam Public Procurement Rules, sec 23 (1), every procuring entity shall constitute and notify a Committee for evaluation of Technical and Financial bids (proposals). The committee shall consist of at least three (03) members.
- (b) The concerned Financial Advisor or the Finance and Accounts Officer or Senior-most Officer of the procuring entity dealing with finance can be a member in the Committee.
- (c) The procuring entity may nominate a Technical Official having the relevant expertise as a member in the Committee.
- (d) A representative from the office/unit who has indented for the consultancy services can be a member of the committee.
- (e) The procuring entity may, with the prior approval of the concerned Administrative Department and after recording reasons thereof, engage a consultant having the requisite level of expertise as a subject matter specialist to assist the Committees but such consultant shall not be part of the Committee.

#### 1.6.4 Evaluation of Proposals

##### (a) Evaluation of Technical Proposal

The Technical proposals shall be tabulated, analysed and evaluated as per the criteria specified in the RFP by the Bid Evaluation Committee which shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it and prepare a list of the bids that have been qualified and accepted technically.

##### (b) Evaluation of Financial Proposal

On completion of the technical evaluation, the Bid Evaluation Committee shall open the financial bids of only those bidders who have been declared technically qualified for further analysis, evaluation, ranking and selection of the successful bidder for award of the consultancy contract. Methods of evaluation and selection is given in details in following paras.

#### 1.6.5 Negotiations

- (a) The objective of negotiations is to formulate a Contract which is acceptable to both, the Client and the Consultant. The parties discuss the technical proposal submitted, detailed scope of work of the consultant, the related arrangements, financial terms, and contract conditions. It must be kept in mind that the scope of work or staffing conditions should not be brought down so much that the basis on which the technical evaluation was done is itself diluted.
- (b) A good contract should protect the interests of both parties in a balanced way. The objective of negotiation should not only be to squeeze the consultant.
- (c) However, financial Negotiation is not an essential component of the process of

selection of consultants. It has been permitted specifically in certain types of selections where the price is not a factor in the selection process, e.g., in

- Quality Based Selection (where the proposal having the highest technical score is selected)
  - Single Source Selection (where only one proposal is taken and considered, and technical proposal also can be negotiated in full)
  - Consultant Qualifications Selection (where the proposal is selected on the basis of technical score)
- (d) In FBS, the cost of the proposal is indirectly taken into account, and therefore financial negotiation may not be done.
- (e) Financial negotiation should be used by the Borrower to achieve consistency between the quality and the price of the services offered and not just to induce a price reduction. They must not result in an increase in the total price of the proposal. The Consultants should not be forced to accept extensions in scope of work without price adjustments
- (f) That said, discussions may be held between the Client and the consultant to fine-tune the contract and bring greater clarity before signing it. Technical aspects like the scope of work, deployment of personnel, fine-tuning delivery schedules, clarifications on facilities to be provided to the consultant, and so on, may be discussed and altered, without making large scale changes in the TOR such that the quality of the original proposal gets diluted.

#### 1.6.6 Award of Contract

- (a) A formal Consultancy Contract is signed with the winning consultant. The same is posted on the State Public Procurement portal. Thereafter the financial proposals of unsuccessful consultants are returned unopened to them.
- (b) The consultancy assignment is awarded to the winning consultant by executing a Consultancy Contract. Before entering a contract with the Consultant, the procuring entity must ensure that
- (i) proposals were invited, shortlisted, and evaluated fairly, and no preference was shown to any consultant, except as per government policy,
  - (ii) the unit rates for manpower and reimbursable expenses quoted by the selected consultant are reasonable and consistent with the prevailing market rates for consultancies of similar nature
  - (iii) required consultancy work has not been split into smaller size parts
- (c) The contract should contain, among other things,
- (i) Updated Terms of Reference (incorporating any changes agreed upon during negotiations/discussions)
  - (ii) Specific deliverables or outputs
  - (iii) Reporting Requirements,
  - (iv) Timeline for delivery of outputs

- (v) List of Key Experts (showing names)
  - (vi) List of other experts and staff
  - (vii) Staffing Schedule
  - (viii) CVs of the Key Experts
  - (ix) Inputs and Facilities to be provided by the Client
  - (x) Schedule of payments (Remuneration and Reimbursables) and mode of payment
- (d) The procuring entity shall involve itself throughout in the conduct of the consultancy so awarded by it, preferably by taking a Task Force approach, and continuously monitoring the performance of the consultants so that the output or outcome and objectives for which the consultancy services have been procured by it are achieved in time.

## 1.7 Methods of Evaluation and Selection of Consultancy Proposals

1.7.1 The proposals received in response to the RFP shall be evaluated and selected by any one of the six following methods as is appropriate to the nature and type of the proposed consultancy prescribed herein and as was specified in the RFP:

- (a) Quality and Cost Based Selection (QCBS);
- (b) Least Cost System, (LCS);
- (c) Quality Based Selection (QBS);
- (d) Fixed Budget System (FBS);
- (e) Consultants' Qualifications Selection (CQS);
- (f) Single Source Selection (SSS).

### 1.7.2 Quality and Cost Based Selection Method (QCBS)

**QCBS method** shall be used for procurement of consultancy services, where quality of consultancy is of prime concern. Thus in this method of selection, both quality (technical Score) and cost (financial Score) are considered appropriately in making the selection. The procedure is outlined as below:

- (a) In QCBS, initially the quality of technical proposals shall be scored as per the criteria specified in the RFP. Only those responsive proposals that have obtained the minimum qualifying score in the technical evaluation as specified in the RFP shall be considered further. Each proposal is given a technical score, usually out of hundred;
- (b) After opening and scoring the financial proposals of the responsive technically qualified bidders who have obtained the prescribed minimum score, a final combined score for both the quality and cost aspects shall be arrived at by giving predefined relative weight-ages for the scores on the quality parameters of the technical proposal and the score of the financial proposal;
- (c) The Request for Proposal (RFP) shall specify the minimum qualifying score for the quality of technical proposal and also the relative weightage to be given to the

quality and cost determined for each case depending on the relative importance of quality in relation to the cost aspects in the assignment, (e.g. 70:30, 60:40, 50:50 etc.). The responsive proposal with the highest weighted combined score shall be selected. The weightage of quality shall not be less than fifty percent;

- (d) The weightage of the technical parameters, i.e. the non-financial parameters, shall in no case exceed eighty percent.
- (e) The proposal with the lowest cost is given a highest Financial Score (Fs) of 100 and other proposals are given a financial score (Fs) proportionate to their quote, according to the formula given below:

$$\text{Financial Score (Fs) of the Consultant} = \frac{\text{Cost of Lowest Proposal (L1)}}{\text{Cost of the Proposal (Ln)}} \times 100$$

*For example, if the cost of the lowest proposal is Rs 120 and that of the proposal being scored is Rs 140, then the score of the lowest proposal will be 100, and the score of the proposal being scored will be 85.71{(120/140) x 100 = 85.71}*

- (f) Thereafter a combined score is calculated for each of the consultants. For calculating the combined score, weightages, (as declared in the RFP), are applied to the Technical and Financial scores.

$$\text{Combined Score (Cs)} = (\text{Tw} \times \text{Ts}) + (\text{Fw} \times \text{Fs}) \text{ where } (\text{Tw} + \text{Fw}) = 1 \text{ (weightages)}$$

Where “Cs” represents Combined Score

“Tw” represents Technical Weightage

“Fw” represents Financial Weightage

“Ts” represents Technical Score

“Fs” represents Financial Score

**Example:**

*After the evaluation of technical & financial proposal submitted by the Consultant (bidder), it was determined that the proposal has got a Technical Score (Ts) of 82 Marks & Financial Score(Fs) of 78 Marks. As per the RFP the quality and cost shall be given weightage in the ratio of (70:30).*

*Then the Combined Score (Cs) shall be calculated as below:*

$$\text{Cs} = (0.70 \times 82) + (0.3 \times 78) = 80.80 \text{ (Here Tw is 70 \& Fw is 30)}$$

**1.7.3 Least Cost System (LCS)**

LCS shall be followed for assignments of a standard or routine nature where established methodologies, practices and standards exist such as audits, engineering design of non-complex works, etc. Unlike Quality and Cost Base Selection (QCBS), there is no weightage for technical score in the final evaluation in Least Cost System (LCS) and the responsive technically qualified proposal received with the lowest price or cost shall be selected.

**1.7.4 Quality Based Selection (QBS) Method**

- (a) QBS method shall be considered as appropriate only for assignments of a complex or highly specialised nature demanding high level of proficiency and innovation for which it is difficult to define a precise TOR, as in multi-sector

feasibility studies, preparation of urban master plans, structural design of large projects having high downstream impact requiring the best available expertise, as in river bridges, power projects, barrages, etc., organisational analysis and development, restructuring interventions for large Government systems like Agencies, Directorates, Undertakings, etc. or highly productive assignments that can be carried out differently, such that proposals shall not be comparable e.g. management or policy research where the degree of usefulness or success depends on the quality of the analysis. The procurement process to be followed for QBS is prescribed below:-

- (xi) In QBS, the RFP shall either request for submission of technical proposal only without the financial proposal or submission of both technical and financial proposals in separate envelopes at the same time in the two-envelope system. The RFP shall mention the estimated budget and the time-frame for completion of the consultancy assignment inviting comments of the bidders thereon;
- (xii) If only technical proposals are invited, the technical proposals shall first be duly evaluated in the same manner as prescribed for the QCBS method and thereafter the bidder with the highest ranked technical bid shall be asked to submit a detailed financial proposal which shall then be negotiated. If negotiations fail due to unreasonable price or costs or unacceptable requirements, the procuring entity may either cancel the procurement proceedings and issue fresh RFP or proceed similarly with the bidder of the next lower-ranked technical bid;
- (xiii) If consultants were requested to provide financial proposals initially together with the technical proposals, the financial proposal of only the bidder with the highest ranked technical bid shall be opened and then negotiated as in (ii) above;
- (xiv) The other financial bids shall be returned unopened to the bidders after the successful conclusion of negotiations as in QCBS method.

#### 1.7.5 Fixed Budget System (FBS)

- (a) FBS shall be considered appropriate only when the assignment is simple and unambiguous, where the TOR can be precisely defined, and where the budget or fund available for the purpose is fixed. In FBS, the TOR shall be prepared with care and precision. The RFP shall indicate the available budget and invite technical and financial proposals in separate envelopes within the available budget. All technical proposals received shall first be evaluated as prescribed for technical evaluation and ranked as in the QCBS method. Thereafter, the financial proposals of only those bidders who have qualified in the technical evaluation shall be opened and the prices quoted therein read out in presence of the bidders who choose to be present. Proposals quoting financial prices that exceed the available budget as indicated in the RFP shall be rejected. The highest ranked technical proposal among the remaining shall be selected for negotiating the contract.

**Summary:**

*The consultant whose technical score is highest, and the total cost is within the allotted budget, is selected.*

#### 1.7.6 Consultants' Qualifications Selection (CQS)

- (a) (a) CQS is appropriate only for small assignments when highly specialized expertise is required, such as from boutique consulting firms with depth of expertise in specific areas, or when recruitment time is critical and the small assignment is short-term, and when preparing and evaluating competitive proposals is unjustified in selection by CQS, the procuring entity shall prepare the TOR, publish notice, as prescribed, calling for EOI and information on the experience and competence of consultants relevant to the assignment, evaluate and rank the EOIs based on the evaluation criteria and establish a short list of at least three firms. The highest ranked firm with the most appropriate qualifications and references shall be selected and the RFP sent to it requesting for technical and financial proposals. The technical proposal so received shall then be evaluated as per the RFP evaluation criteria and contract negotiated if found acceptable. If not acceptable, the RFP shall then be sent to the next ranked firm in the shortlist and the process repeated.

#### 1.7.7 Single Source Selection (SSS)

SSS or selection by direct negotiation may be considered in exceptional cases, only, if:-

- (i) the tasks represent a natural continuation of previous work completed by the consultant;
- (ii) there exists an emergency situations arising out of disasters, natural or otherwise, or where timely completion of the assignment is of utmost importance;
- (iii) the execution of the consultancy involves use of proprietary techniques;
- (iv) only one prospective consultant is qualified and available or has the exceptional experience for the assignment; or
- (v) the value of assignment being small enough (below a threshold as may be notified by the Finance Department on this regard) and where a competitive process would not be viable.

### 1.8 Hiring of Individual Consultants through Framework Agreements

- 1.8.1 Rule 24(J) (v) of Assam Procurement Rules provides for the hiring of individual experts from Framework Agreements when the requirement exists over a period of time in terms of its procurement plan but for which the quantity or extent and timing cannot be specified in advance.
- 1.8.2 In case individual experts are required to be hired through Framework Agreement with service provider firms, the concerned procurement entity shall, in addition to the procedure prescribed describe the requirement of different experts in the Request for Proposal document along with the selection criteria focusing on the relevant qualifications and expertise required to enable firms to furnish the list of experts they commit to make available in their proposal.
- 1.8.3 The procurement entities shall, after due evaluation of proposals received, establish a list of qualified experts, which can include experts from different firms. The procurement entity and the Framework Agreement firms shall agree upon pre-established fee rates



to be paid for the experts on standard conditions of contract and such payments shall be made based on the time usefully spent by the experts in providing the service.

- 1.8.4 Experts shall be selected from the list based on a “call off” request with specific Terms of Reference for the assignment and the comparative qualitative evaluation of the Curriculum Vitae of the proposed experts or the fee levels and a specific contract shall be signed for each assignment.
- 1.8.5 As part of the call-off process, firms shall be given a description of the scope of supply or tasks that they will be expected to provide. The statement of work or purchase order to be issued as part of the call-off process shall specify the objectives, tasks, deliverables, timeframes and price or price mechanism. The price for individual call-off contracts shall be based on the fees, charge rate or pricing mechanism detailed in the Framework Agreement. A firm or individual expert shall be selected from the panel for the call-off process through secondary procurement
- 1.8.6 Secondary procurement can be by Request for Quotations from some or all of the panel members based on the lowest evaluated cost or competitive proposals or Request for Proposal with the bidding Document from some or all of the panel members, based on expertise, proposed solutions and value for money
- 1.8.7 direct selection based on objective criteria for call-offs that have been described in the Framework such as either ‘location’ where call-off contracts are awarded to the firm that is best able to deliver at the required location or ‘balanced division’ of supply, scope, task, where an upper-value limit is fixed and call-off contracts are awarded in turn on a rotational basis when a firm reaches the upper-value limit.

## 1.9 Hiring of Individual Consultants

- 1.9.1 Whether to hire an individual consultant or to hire a consultancy firm depends on the complexity of job and the scope of the work to be carried out. The procuring entity must take a call on this issue. Individuals can be considered for advisory services assignments or technical opinions on specific matters, in which specialized individual knowledge is the key issue. Individual consultants are engaged on assignments for which
  - the experience and qualifications of the individual are the predominant considerations,
  - no support from an organisation is needed, and,
  - teamwork or a multi disciplinary approach is not necessary for the success of the assignment.
- 1.9.2 The process of hiring individual consultants consists of
  - preparation of Terms of Reference for the consulting assignment, including the scope of work, location, time- frame, shortlisting criteria, and get it approved by the Competent Authority.
  - advertising on SPPP
  - selection is made by comparing the academic background, experience, knowledge of local conditions (if applicable) like language, culture, familiarity with administrative system and government organisation.

- Selection may be done by a Consultant Evaluation Committee (CEC) who will allot marks to the various criteria.
- the CEC may conduct an interview with the candidates, awarding marks for the interview and recommending the remuneration to be paid to the candidate for the interview and recommending the remuneration to be paid to the candidate

### 1.10 Hiring of Retired Government Servants

- 1.10.1 Retired Government servants carry a wealth of experience and expertise with them. Though they are retired, they may be physically active and able to contribute their rich experience to the betterment of the State.
- 1.10.2 Similarly, there are eminent persons who are highly qualified and renowned experts in their own fields, having specialised professional skills, who can contribute a great deal if hired by the Government.
- 1.10.3 The Assam Public Procurement Rules Rule 25 (11)) empowers the State Government to, in the public interest or towards meeting a public need, engage following persons as Consultants,
- retired Government servants, or
  - persons of renown having therequisite expertise and experience, or,
  - eminent persons with specialised professional skills, in specific areas of public service like;
  - public policy analysis and formulation,
  - delivery of medical and health services,
  - training and development tasks,
  - legal advisors, and,
  - other administrative, professional or academic areas, or
  - in trades like secretarial practice, accounting and financial analysis, data management, electrical, mechanical and digital technicians, etc., or,
  - personnel possessing multiple skills in such areas.
  - in consistence with its notified policies. Guidelines issued in this regard by the Finance Department from time to time will be applicable.

### 1.11 Law of Agency as applicable to consultants

- 1.11.1 Laws which are applicable to procurement of Goods are equally applicable to procurement of consultancy and other services. In legal terms, a consultant hired by a Procuring Entity / Client Employer is an agent and carries on the work on their behalf. There exists a Principal-Agent relationship between them. As per the Law of Agency, the Client (user department) is vicariously liable (legally and financially) for the actions of its Agents.

*For example, a violation of certain labour laws in deputing staff for Procuring Entity's contract by the agents may render the Procuring Entity legally and financially answerable for such violations, under certain circumstances.*

- 1.11.2 Hence there is a need for the procuring entity to be aware of this, to incorporate a suitable caveat in the contract, and to check periodically that the relevant rules are being observed by the consultant.

## Appeals, Debarment & De-registration

### 1.1 Appeals

#### 1.1.1 Objective of this Provision:

**Chapter-III** of the Assam Public Procurement Act, 2017 deals with appeals. Any bidder or prospective bidder, whoever feels aggrieved by any decision, action, or omission of the procuring entity, can now file appeal with the appropriate Authority in a formal and structured manner. The key objective of this provision under the Act is to give an opportunity of being heard to the aggrieved party and redress the grievance in a time bound manner.

#### 1.1.2 Filing of 1st Appeal (Ref Section 38(1) of APP Act, 2027)

Except in case of the matters as mentioned under Sec. 40 of the APP Act, 2017, any bidder or prospective bidder if feels aggrieved by any decision, action or omission of the procuring entity is in contravention to the provisions of the Act or the Rules or guidelines issued thereunder, **may file an appeal** to such officer of the procuring entity, as may be designated by it for the purpose, **within a period of ten days** or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved, in the form and the manner as prescribed under Rule 26 of APP Rules, 2020.

Provided that after the declaration of a bidder as successful in terms of **Section 27**, the appeal may be filed only by a bidder who has participated in procurement proceedings.

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

#### 1.1.3 Disposal of 1st Appeal by Designated Officer (Ref Sec 38(2&3) of APP Act, 2027)

On receipt of an appeal under section 38(1) , the officer designated for the purpose shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall, subject to the order passed against second appeal (u/s 38(5)), be final and binding on the parties to the appeal. The officer designated has to dispose the appeal **within 30 days from** the date of appeal.

#### 1.1.4 Filing of 2nd Appeal (Ref Sec. 38(4) of APP Act, 2027)

If the officer designated for the first appeal fails to dispose of the appeal within the prescribed timeline or the bidder or perspective bidder or **the procuring entity** is aggrieved by the order passed against first appeal, the bidder or perspective or the procuring entity, as the case may be, may file a second appeal to an officer or authority designated by the State Government in this behalf **within fifteen days** from the expiry of 30 days' timeline from filing of the 1<sup>st</sup> appeal with the office designated or of the date of receipt of the order passed against first appeal, as the case may be.

#### 1.1.5 Disposal of 2nd Appeal(Ref Sec. 38(5&6) of APP Act, 2027)

On receipt of the second appeal, the officer or authority designated by the State Government for that purpose shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the Rules and guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall be final and binding on the parties to the appeal. The officer designated for this purpose shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of **within thirty days** from the date of filing of the appeal. In case of delay, beyond the timeline of 30 days, the officer has to record reasons for the same.

#### 1.1.6 Other Requirements

- a) The officer or authority to which an appeal (1<sup>st</sup> or 2<sup>nd</sup> )may be filed under Section 38 (1) or 38(4) shall be indicated in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.
- b) Every appeal under Section 38 shall be filed in such form and manner and shall be accompanied by such fee as may be prescribed.
- c) While hearing an appeal under this Section 38, the officer or authority concerned shall follow such Rules of procedure as may be prescribed.
- d) No information which would impair the protection of essential security interests of India or impede the enforcement of Law or fair competition, or prejudice the legitimate commercial interests of the bidder or procuring entity, shall be disclosed in a proceeding under this Section.
- e) The bidding Document shall have references to the Act, these rules and other laws and regulations directly pertinent to the procurement proceedings where felt required by the procuring entity, provided that the omission of any such reference shall not constitute any ground for appeal or liability on the part of the procuring entity;
- f) The bidding document shall have reference to the right provided to appeal against an unlawful act or decision or procedure followed by the procuring entity in relation to the procurement proceedings.

### 1.2 Stay to Procurement Proceedings (Ref Section 39 of APP Act, 2017)

1.2.1 While hearing of an Appeal under **Section 38**, the Officer or Authority hearing the appeal may, on an application made in this behalf and after affording a reasonable opportunity of hearing to the parties concerned, stay the procurement proceedings pending disposal of the appeal, if he, or it, is satisfied that failure to do so is likely to lead to miscarriage of justice.

### 1.3 Cases where Appeal shall not lie (Ref Section 40 of APP Act, 2017)

- 1.3.1 No appeal under Section 38 shall lie against any decision of the procuring entity relating to the following matters, namely:-
- a) determination of need of procurement in terms of Section 5;

- b) provisions limiting participation of bidders in the bid process in terms of the provisions of Section 6;
- c) the decision of whether or not to enter into negotiations in terms of Section 15;
- d) cancellation of a procurement process in terms of Section 26;
- e) applicability of the provisions of confidentiality under Section 49;

#### **1.4 Form of Appeal (Ref Rule 26 of APP Rules, 2020)**

- 1.4.1 An appeal (1st or 2nd) under Section 38 (1)/(4) of the APP Act, shall be submitted in Form No 1 appended to these rules along with as many copies as there are respondents in the Appeal.
- 1.4.2 Every appeal shall be accompanied with a copy of the order appealed against, if any, and an affidavit verifying the facts stated in the appeal.
- 1.4.3 An appeal shall be presented to the First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or through duly authorised representative (Ref Rule 21 of APP Rule, 2020).
- 1.4.4 The Administrative Department shall designate the First Appellate Authority; the State Government shall designate the Second Appellate Authority by notifications. (Refer Rule 21 APP Rule 2020)

#### **1.5 Procedure for Disposal of Appeal (Ref Rule 27 of APP Rules, 2020)**

- 1.5.1 The First Appellate Authority or Second Appellate Authority, as the case may be, upon filing of appeal, shall issue notice accompanied by copy of appeal including the affidavit and documents enclosed, if any, to the respondents and fix a date of hearing.
- 1.5.2 On the date fixed for hearing, the First Appellate Authority or Second Appellate Authority, as the case may be, shall :-
  - a) peruse or inspect documents, relevant records or copies thereof relating to the matter;
  - b) hear all the parties to the Appeal present before him and record statements as required.
- 1.5.3 And, thereafter, consider the matter listing the points in the issue (s) in question and dispose the Appeal with a speaking order in writing wherein the reasons for the decision made and shall be specifically recorded together with discussion of the evidence thereof and available. Copies of the Order disposing the Appeal shall be endorsed to the parties to the appeal free of cost and the records thereof shall be preserved as a part of the procurement proceedings.
- 1.5.4 The order so passed, disposing the Appeal shall also be placed on the State Public Procurement Portal.

#### **1.6 Register, Records and Annual Return of Appeals ( Ref Rule 28 of APP Rules, 2020)**

- 1.6.1 Every First and Second Appellate Authority shall maintain a register of Appeals in which brief details of appeals submitted, shall be recorded immediately on its receipt and an Appeal case number indicating the date of filing of the Appeal shall be allocated to it. The records of every First Appeal and Second Appeal shall be maintained by the



concerned First and Second Appellate Authorities respectively in Appeal Case files as official records.

- 1.6.2 The concerned Appellate Authority shall furnish annual returns of First Appeals and Second Appeals received, as the case may be, indicating the status thereof, specifying whether disposed or pending, to the concerned Administrative Department which shall be compiled by the Administrative Department and furnish to the State Procurement Facilitation Cell in soft and hard copy within thirty days of the closing of each financial year.

## **1.7 Debarment from Bidding (Refer Section 46 of APP Act, 2017)**

- 1.7.1 As per Sec 46(1) of APP Act, 2017, a bidder shall be debarred by the State Government if he has been convicted of an offence,-

- c) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988); or
- d) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) 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.

- 1.7.2 A bidder debarred under Sec 46(1) of the APP Act/2017 shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which he was debarred.

- 1.7.3 If a procuring entity finds that a bidder has breached the code of integrity specified in Section 11, it may debar the bidder for a period not exceeding three years.

- 1.7.4 Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years.

- 1.7.5 The State Government or a procuring entity, as the case may be, shall not debar a bidder under this Section 46 unless such bidder has been given a reasonable opportunity of being heard.

## **1.8 Delisting of Bidders or Contractors (Ref Rule 20 of APP Rules, 2020)**

- 1.8.1 As per Rule 20(1) of APP Rules, 2020, a registered or empanelled bidder, after giving reasonable opportunity of being heard, may be de-registered and removed from the list by the concerned procuring entity for violation of the provisions of the Act or for any other valid reasons as in the following cases which are only indicative and not exhaustive:-

- e) The contractor fails to abide by the terms and conditions of registration or to maintain the required technical or operational staff or equipment or there is change in its production or service line affecting its performance adversely or fails to cooperate or qualify in the review for registration;
- f) If the firm ceases to exist or is acquired by or merged with another firm, or ceases to operate in the category of requirements for which it is registered;
- g) Bankruptcy or insolvency on the part of the contractor as declared by a court of law;

- h) Debarment by the Central Government, State Governments, concerned Administrative Department or Head of Department or any other Government Agency or Body or procuring entity under them;
  - i) Other than in situations of force majeure, after opening of financial bids, the contractor withdraws from the procurement process or after being declared as successful bidder, withdraws from the process or fails to enter into a procurement contract or fails to provide performance security or any other document or security required in terms of the bidding documents;
  - j) If a Court of law or the Comptroller and Auditor General or the Central Bureau of Investigation or State Vigilance and Anti-Corruption Department or Vigilance Commissioner or any other such competent authority or other investigating agency in respect of a case under investigation recommends such a course;
  - k) Employs a government servant within two years of retirement of that government servant, who has had business dealings with the registered bidder in an official capacity before retirement;
  - l) Makes any false declaration to any Department or Agency of the Government;
  - m) Or any other ground, based on which the registering authority considers, that continuation of registration is not in the public interest.
- 1.8.2 Whenever a firm or contractor or supplier is removed from the list of registered contractors, its registration shall automatically stand cancelled. The firms, contractors or suppliers removed from the list of registered contractors shall neither be invited to bid nor shall their bids be considered for evaluation but the firm or contractor or supplier data relating to them shall not be deleted from the portals or the computer system.
- 1.8.3 Firms or contractors or suppliers removed from the list of registered contractors or their related entities shall be allowed to apply afresh for registration after the expiry of the period of removal.
- 1.8.4 The procuring entities shall have the right to reassess, at any date, firms or contractors or suppliers already registered to satisfy themselves about their current financial soundness, credit worthiness, facilities and resources available with them and take appropriate action thereon in accordance with the Act and these rules.
- 1.8.5 Notwithstanding anything contained in Rule 20(1) of APP Rule, 2020, a registered bidder, who already holds a previous contract or award for works or supply of goods which is in progress, is found to have adopted fraudulent means or has otherwise violated the provision of the Act while submitting bids for or undertaking a different work or supply shall be debarred from participating in that bid and in all bids for future works for a period up to three years after being given a reasonable opportunity of being heard but may, if the procuring entity so decides in the public interest, not be deregistered till the completion or cancellation of such previous contracts or awards for works or supply already held.

**FORM No.1**

(see Rule 26)

**Memorandum of Appeal under the Assam Public Procurement Act, 2017**

Appeal No ..... of ..... before the.....(First / Second Appellate Authority)

1. Particulars of the appellant:

- i. Name of the appellant:
- ii. Official address, if any:
- iii. Residential address:

2. Name and address of the Respondent(s):

- i.
- ii.
- iii.

3. Number and date of the Order appealed against and name and designation of the Officer/ Authority who passed the order (enclose copy), or a statement of decision, action or omission of the procuring entity in contravention of the provisions of the Act by which the appellant is aggrieved:

.....

4. If the Appellant proposes to be represented by a representative, the name and postal address of the representative:

.....

5. Number of Affidavits and documents enclosed with the appeal:

6. Grounds of appeal:

.....

..... (Supported by an affidavit)

7. Request:

.....

.....

Place:

Date:

## Organisational Structure for Implementation of Procurement Laws

### Learning Outcomes

Roles of Responsibilities of Different Organisational Units:

- Procurement Advisory Group
- State Procurement Facilitation Cell
- Procurement Reform Core Team
- Centre of Excellence for Public Procurement in Assam

### 14.1 Different Organisational Units

14.1.1 Different Organisational Units have been set up by the Finance Department (vide OM No. FEB.366/2016/Pt/53, Dt 12/Nov/2020) for smooth rolling out and successful implementation of newly enacted procurement laws including Assam Public Procurement Act, 2017, Assam Public Procurement Rules, 2020 and Guidelines, etc., as may be issued or amended from time to time.

14.1.2 Different organisational units formed there under includes

- a) Procurement Advisory Group
- b) State Procurement Facilitation Centre
- c) Procurement Reform Core Team
- d) Centre of Excellence for Public Procurement in Assam

### 14.2 Permanent Advisory Group (PAG)

14.2.1 The Permanent Advisory Group was set up by virtue of the order issued by the finance department to consolidate cross-departmental experiences and learnings from the implementation of procurement reforms and to corroborate policy decisions proposed by the SPFC.

14.2.2 The PAG shall consists of the following members:

1	Senior-most Secretary of the Finance Department	Chairman
2.	Senior-most Secretary of the Public Works Department	Ex-officio Member
3.	Senior-most Secretary of the Home & Political Department	Ex-officio Member
4	Senior-most Secretary of the Health and Family Welfare Department	Ex-officio Member
5	Senior-most Secretary of the Power (electricity) Department	Ex-officio Member
6.	Commissioner and Secretary, Finance Department	Member-Secretary

### 14.2.3 Role & Responsibilities of PAG

- e) Advice the SPFC about policy matters on continuous basis.
- f) Review of the Standard Bidding Documents for adoption by the State.

- g) Recommending the financial thresholds for various procurement methods,
- h) Any other policy matters that may be endorsed by the SPFC.

### 14.3. State Procurement Facilitation Cell (SPFC)

14.3.1 The section 50 of the Assam Public Procurement Act, 2017 requires the State to establish a State Procurement Facilitation Cell headed by an officer not below the rank of Commissioner. Accordingly, a SPFC has been notified by OM dt 12/ Nov/2020. The Cell consists of the following members:

1	Commissioner and Secretary, Finance Department	Chairman
2	Sr. Financial Advisor, Finance Department	Member-Secretary
3	Additional Secretary/ Joint Secretary/ Deputy Secretary in charge of Expenditure Control branches	Ex-officio members
4	Procurement Support Specialist, ASPIRe project	Member
5	Representatives/ Sr. FAs of other departments such as H&FW, Home & Political, GAD, Social Welfare, etc. may be co-opted by the chairperson from time to time as per the requirement	Co-opted members

#### 14.3.2 Key Functions of SPFC

- a. *Maintain and update the State Public Procurement Portal (SPPP : As per Sec 17 of the APP Act,2017 the State Govt. shall set up and maintain a State Public Procurement Portal accessible to the public for posting matters relating to public procurement. The portal will contain documents related to pre-qualification, bidder registration, bidding, its amendments, pre-bid conference, bidders list, pre-qualified bidders, debarred bidders, etc. SPFC has been assigned the responsibility for managing SPPP.*
- b. *Arrange for training and certification: By virtue of Sec 48 of the APP Act, 2017 the State Government is empowered to prescribe professional standards to be achieved by officials dealing with procurement matters, and specify suitable training and certification requirements for the same. If any training and/or certification is prescribed by the State Govt, it will be the responsibility of the SPFC to arrange for imparting the training and/or facilitating certification courses.*
- c. *Recommend measures for effective implementation of APP Act, 2017: The SPFC may recommend to the State Government appropriate measures or steps to be taken and/or procedures to be followed for successful implementation of the APP Act and Rules for streamlining the public procurement practices in the State.*
- d. Provide guidance consistent with the provisions of this Act and the rules and guidelines made there under, to the procuring entities with respect to the matter relating to public procurement.

*If any procurement entity of the state needs guidance in the matter of public procurements, it can approach the SPFC and obtain the same. The guidance could be in the area of interpretation of the rules, applicability of the rules in a given situation, or on any other public procurement related topic connected to the Act.*

- e. Study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents.
- f. Subject to the provisions of sub-section (2) of section 28, encourage procurement entities to adopt electronic procurement; and,  
*The section 28 (1) of the Act lists the different procurement methods (13 Nos.) which can be used by a procurement entity. The State Government may notify any other (new) method, provided the new method satisfies the principles of procurement contained in the Act, and the State Government considers the new method necessary in public interest.*  
*As per Sec 28 (2) of the Act, the State Government can issue a notification declaring adoption of electronic procurement as compulsory. This mandate may apply to different stages of procurement or different types of procurement. Once notified, any communication which requires communication in writing, will satisfy the condition, if sent electronically.*
- g. Discharge other functions as may be assigned to it by the State Government consistent with the provisions of this Act and the Rules and Guidelines made there under.

#### 14.3.3 Other Functions of SPFC

- h. If a procuring entity or sanctioning authority has not been able to take a decision on bids within the time period specified in the Schedules or as has been relaxed in terms of sub-rule (3) above, it shall forthwith, within the second working day of the expiry of such time period, report the matter to the Head of the concerned Administrative Department with intimation to the State Procurement Facilitation Cell indicating the specific reason for the delay and also publish the reason thereof in the State Public Procurement Portal. (Ref Rule 10 (4) of APP Rules, 2020)
- i. The State Procurement Facilitation Cell may recommend to the State Government benchmarking standards, or Key Performance Indices for procurement processes or entities for effective implementation of the Act. (Rule 23 (21))
- j. An Annual report of all procurements made by the method of single source procurement shall be submitted, in writing, to the State Procurement Facilitation Cell through the concerned Administrative Department by the first quarter of the following financial year. This report will be compiled by the SPFC and placed on the portal. (Rule 24 (C)(viii))
- k. The procuring entities shall furnish annual returns of all procurement made by them through Request for Quotations to the State Procurement Facilitation Cell through the concerned Administrative Department within the first quarter following the end of each financial year. (Rule 24 (F)(vii))
- l. The concerned appellate authority shall furnish annual returns of First and Second Appeals received, as the case may be, indicating the status thereof, specifying whether disposed or pending, to the concerned Administrative



Department which shall be compiled by the Administrative Department and furnish to the State Procurement Facilitation Cell in soft and hard copy within thirty days of the closing of each financial year. (Rule 28 (ii))

- m. In addition to above functions, the State Government may, by notification, also entrust the SPFC with one or more of the following functions (Rule Sec 32):

Issuing, with the approval of the Head of the Finance Department and consistent with the provisions of the Act, clarifications relating to the composition and powers of various Committees dealing with procurement as in sub-rule (1) of rule 23;

- (i) Monitoring publication of required information related to procurement in the State Public Procurement Portal by various procuring entities as mandated in rules 17 and 23;
- (ii) Monitoring mandatory use of e-procurement by procuring entities under rule 17;
- (iii) Setting coding conventions to facilitate e-governance, including a Harmonised System of Nomenclature and Coding for subject matters of all procurement.
- (iv) Establishing, maintaining and continuous monitoring of the required safety and security protocols for the State Public Procurement Portal, issuing guidelines for the purpose and taking all precautionary measures thereof to ensure the security and integrity of the portal;
- (v) Monitoring Appeals relating to procurement as per section 38 to 40 of the Act, and taking steps to improve the appeal mechanism;
- (vi) Monitoring action taken regarding offences and punishments relating to procurement as per sections 41 to 47 of the Act, that are brought to its notice;
- (vii) Any other work required to be performed under the Act or these rules.

#### 14.4 Procurement Reform Core Team (PRCT)

- 14.4.1 PRCT will be responsible for all preparatory activities pertaining to implementation of the Act and Rules and shall comprise the following members:

S. No	Designation	Role
1	Project Director, AS-CFMS	Chairman
2	Additional Project Director, AS-CFMS	Member-Secretary
3	F&AO, Director of Accounts and Treasuries	Member
4	Procurement Support Specialist	Member
5	e-Procurement Project Manager	Member
6	Regional Business Facilitator, GeM	Member
7	Representatives/Sr. FAs or PWD, H&FW Department, Home & Political Department, DGP Office, SAD, GAD and DC Kamrup (M)	Member

- 14.4.2 The Functions of PRCT shall include:

- a. Preparation of Capacity Building Strategy

- b. Conduction Training of Trainers and providing handholding support to them
- c. Preparation of all necessary documents for effective implementation (e.g., SBDs, Manuals, Oms, FAQ, etc.)

#### 14.5. Centre of Excellence for Public Procurement in Assam

14.5.1 In order to develop various standard documents and information materials pertaining to the Assam Public Procurement Act and Rules, and to provide operational assistance to various procurement entities in procurement related matter, the Centre of Excellence for Public procurement in Assam (CEPPA) is hereby notified. The organisational structure of CEPPA shall be based on hub-and spoke model and shall comprise the following units:

- a. **Procurement Shared Service Team (PSST):** The Procurement Shared Service Team, comprising domain specialists and consultations, shall be primarily responsibility for the following functions:
  - (i) Developing function specific Sample Bidding Document
  - (ii) Assisting SPFC in creation standard forms, register, and other templates
  - (iii) Assisting procuring entities and / or Experience Control Branches in compliance check of procurement process including review of bidding documents.
- b. **e-Procurement Support Cell:** The e-Procurement Cell, headed by the e-Procurement Project Manager, shall be responsible for providing operational support to all procuring entities and bidders for using the Assam GePNIC portal as well as the State Public Procurement Portal.
- c. **GeM Support Cell:** The GeM Support Cell shall comprise a mix of government employees and contractual staff. The Cell shall be responsible for the following tasks:
  - (i) Advocacy and training for buyers and sellers
  - (ii) Operational support and handholding of buyer entities
  - (iii) Liaising between the buyer entitles /Government of Assam and GeM Delhi to resolve technical issue or request for creation of new product/service, etc.
- d. **Decentralised Procurement Support:** In order to facilitate procuring entities to adopt the new procurement framework, a set of Junior Procurement Consultants shall be deployed as various major procuring entities, consequent to effectiveness of the Rules. These consultants shall assist the Sr Financial Advisor of the entities in the following matters:
  - (i) Selection of Suitable procurement method.
  - (ii) Preparation of bidding documents.
  - (iii) Contract management and resolution of issues thereof.



