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MATERIALS MANAGEMENT REVIEW



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SPECIAL ISSUE ON PUBLIC PROCUREMENT



LATEST
Vigilance-Related
Govt. of India (DoPT) Orders/Circulars
Central Vigilance Commission (CVC) Orders/Circulars

Cartelization



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EASE OF DOING BUSINESS



From the Desk of Chief Editor & National President



Dear Members,

Public procurement is estimated to be around 15 to 20% of GDP. Huge expenditure on public procurement, therefore, naturally impacts businesses, society and government agencies. This evinces keen interest from policymakers, watchdogs, industry and general public.

Public procurement in India in general and particularly by the Central Govt is not governed by any separate laws. The laws governing public procurement have been separately promulgated by some of the State governments but these are also not comprehensive enough to cover all aspects of public procurement. Therefore, the laws that govern private procurement also govern public procurement. Public procurement, in addition, is also governed by various provisions contained in the constitution, particularly the fundamental rights, and other Acts passed by legislatures. Besides that, the public procurement authorities are expected to be the model purchasers following the high ideals of delegation of financial powers, transparency, efficiency, economy, equitable treatment of suppliers, promotion of competition and appeal rights. Changes in the business environment have necessitated the use of new technologies in procurement and the law is not keeping pace with the changes. A serious attempt to make a separate law for union public procurement was made by the central government in 2012 when public procurement Bill 2012 was introduced in the parliament but the same could not be passed as an Act of Parliament. As of now, public procurement remains governed by framework of rules, e.g. General Financial Rules (GFR) 2017, procurement manuals framed by finance departments and supplemented by user departments, e.g. Manual of procurement for goods and services, Manual for procurement of Consultancy Services, Manual for procurement of works, Defence Procurement Manual, Defence Procurement Policy, manuals by various state governments, manuals by various public sector undertakings and autonomous bodies, Delegation of financial power rules 1978 as amended etc. Essentially, the public procurement remains a procedure based procurement and strict adherence to rules and procedure is expected by the general public and from the procurement authorities.

Public procurement has attracted the attention of various watchdogs particularly the Vigilance and Audit authorities. Many suggestions from vigilance and Audit authorities brought path breaking changes and have also contributed towards improvement of public procurement. Guidelines issued by Central Vigilance Commission (CVC) contributed a great deal in streamlining public procurement and a number of these guidelines have subsequently been subsumed in GFR 2017. There has been criticism of some of CVC guidelines, particularly the guidelines pertaining to L1 rule and also regarding negotiations seen as stumbling blocks in public procurement. The matter was revisited and limited changes have been incorporated recently in the new guidelines issued by Ministry of Finance in their order dated 29th October 2021 pertaining to public procurement and projects and is a must read for all procurement professionals.

Public procurement also reflects the direction of government for social welfare, industrial development, technological development and good governance. There is no better example than the amendments by the Department of Promotion of Industry and Internal Trade (DPIIT) of the rules for Preference to Make in India, startup etc., amendments in the definition of MSME by Ministry of MSME, amendments in the Public Procurement Policy Order 2012 for SMEs, amendments in Arbitration and Conciliation Act 1996. DPIIT order issued in November 2021 on Make in India is a good example of improvements to keep pace with needs and time and consolidation of various orders. Courts have also played a vital role in public procurement to assert primacy of fundamental rights, rule of law, transparency etc.

Adoption of Technology and best practices in procurement, innovation and flexibility have been the key aspects of changes in the public procurement in recent times. This is reflected in the development of Government e Market (GeM) into a significant public procurement platform offering goods, services and works of a wide variety, adoption of reverse auctions bunching of goods in same supply order and customised bidding on GeM, end to end solution of procurement activities on GeM, amendment of rules during covid-19 etc. This requires tremendous efforts in training and change management by procurement authorities.

IIMM with its wide network of branches and members from diverse fields of SCM will continue to play a significant role in public procurement by organising workshops, training, seminars and conventions. Current issue of MMR is also an effort in this direction. We shall continue to make efforts to make knowledge and training available to SCM professionals in relevant areas and thus make effective contribution in nation building.

I wish a very happy festival of Holi to all of you!

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PUBLIC PROCUREMENT – OPPORTUNITIES AND CHALLENGES

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1.0 Introduction : Government procurement or public procurement is the procurement of goods, services and works on behalf of a public authority, such as a government agency. Globally, government procurement accounts for a substantial part of the global economy. In India, government procurement constitutes about 30% of the GDP. Governments, just like private companies, have to buy goods and services for their operational needs. Procurement of goods and services is carried out by various ministries, departments, municipal and other local bodies, statutory corporations and public undertakings both at the Centre and at the State level. Promotion of efficiency.

As public procurement utilizes a substantial portion of taxpayers' money, governments are expected to follow strict procedures to ensure that the process is fair, efficient, transparent and minimizes wastage of public resources. To prevent fraud, waste, corruption, or local protectionism, the laws of most countries regulate government procurement to some extent. Laws usually require the procuring authority to issue public tenders if the value of the procurement exceeds a certain threshold. Government procurement is also the subject of the Agreement on Government Procurement (GPA), a plurilateral international treaty under the auspices of the World Trade Organization.

The increasing volume of public procurement opportunities in India, coupled with the scale and magnitude of government projects, holds tremendous economic potential for both local and overseas companies. The recent upward trend in procurement opportunity in India can be attributed to a variety of measures and initiatives.

2.0 Legal and regulatory public procurement framework : The legal and regulatory public procurement framework in India broadly comprises the following elements:

i. **Constitutional provisions:** The Constitution of India authorises the Central and State Governments to contract for goods and services in the name of the President of India or the Governor of the State (respectively), and directs autonomy in public spending. However, it does not stipulate any procurement policies or procedures.

ii. **Legislative provisions:**

1) There is no comprehensive central legislation

exclusively governing public procurement. Nonetheless, various procurement rules and policies (see below) are guided by central legislations such as the Contract Act 1872, Sale of Goods Act 1930, Prevention of Corruption Act 1988, Arbitration and Conciliation Act 1996, etc.

2) In addition, certain states, like Tamil Nadu, Karnataka, Andhra Pradesh, Assam and Rajasthan have enacted state-specific legislation such as the Tamil Nadu Transparency in Tenders Act, 1998, Karnataka Transparency in Public Procurement Act, 1999, the Rajasthan Transparency in Public Procurement Act, 2012, etc., that govern procedure for procurement in these states.

iii. **Administrative guidelines:**

a) Comprehensive administrative rules and directives on financial management and procedures for government procurement are contained in the General Financial Rules (**GFR**) initially implemented in 1947 and last modified in 2017. All government purchases must strictly adhere to the principles outlined in the GFR, which include specific rules on procurement of goods and services and contract management.

b) In addition, the Manual for Procurement of Goods, 2017 (**MPG**) contains guidelines for the purchase of goods, and the Delegation of Financial Powers Rules, 1978 (**DFPR**) delegate the government's financial powers to various ministries and subordinate authorities.

c) In 2017, the government issued the Public Procurement (Preference to Make in India) Order 2017 which grants purchase preference to local suppliers based on certain conditions so as to promote manufacturing and production of goods and services in India.

iv. **Overseers:** The framework is bolstered by authorities including: (a) the Central Vigilance Commission (**CVC**) tasked with increasing transparency and objectivity in public procurement; (b) the Competition Commission of India (**CCI**) which checks anti-competitive elements; and (c) the Central Bureau of Investigation (**CBI**) engaged for investigation and prosecution of the criminal activities in the procurement process such as probity issues.

In summary, a public procurement process must adhere to: (i) GFR and MPG; (ii) sector-specific procurement rules contained in manuals published by the relevant ministry; and (iii) state-specific legislation on transparency in procurement. As between the procurer and the supplier, these rules above flow down via a tender award and a contract.

3.0 Public Procurement (Preference to Make in India)

Government has issued Public Procurement (Preference to Make in India) to encourage 'Make in India' and to promote manufacturing and production of goods, services and works in India with a view to enhancing income and employment. This Order is issued pursuant to Rule 153 (iii) of the General Financial Rules 2017. The salient features of the aforesaid Order are as under:

- I The Order is applicable for procurement by Ministry / Department / attached / subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- I In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.
- I The margin of purchase preference shall be 20%. 'margin of purchase preference' means the maximum extent to which the price quoted by a local supplier may be above the L1 for the purpose of purchase preference.
- I Classes of Local Suppliers based on local content as per the revised PPP-MII Order dated 04.06.2020 issued by the Department for Promotion of Industry and Internal Trade (DPIIT) are as under:
 - I **Class-I Local supplier** - a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50%.
 - I **Class-II Local supplier** - a supplier or service provider, whose goods, services or works offered for procurement, has local content more than 20% but less than 50%.
 - I **Non-Local supplier** - a supplier or service provider, whose goods, services or works offered for procurement, has local content less than or equal to 20%.
 - I Only 'Class-I local supplier' and 'Class-II local supplier' shall be eligible to bid in procurement of all goods, services or works, and with estimated value of purchases less than Rs. 200 crore.

Government E-Market Place (GeM) Portal and NICSI, the two major procurement agencies of Government of India, are expected to ensure compliance of the Electronic Products Notification in their procurement. In case of a complaint Standardisation Testing and

Quality Certification (STQC) will be the agency to look into the domestic value addition.

4.0 Basic Underlying Principles : India's regulatory and institutional framework seeks to ensure responsibility, accountability and efficiency in the public procurement regime. The underlying principle is to procure materials/services of specified quality at the most competitive prices in a transparent and non-arbitrary manner. Typically, various processes in Public Procurement involved include (1) Need, (2) Procurement Planning, (3) Requirement Specification, (4) Tender Preparation, (5) Tender evaluation, (6) Contract Award and (7) Contract Performance.

This is evident in the GFR which declares that all authorities delegated with the financial powers of procuring goods in public interest will be responsible and accountable to ensure efficiency, economy and transparency, fair and equitable treatment of suppliers, and the promotion of competition in public procurement. To this end, specific measures have been set out under the GFR including adherence to a code of integrity to address probity issues, etc.

Further, the Supreme Court of India has recognised that while the government must have freedom of contract:

- i. all contracts by the State should only be granted by public auction/tenders to ensure complete transparency and provide all eligible persons with the opportunity to participate in the auction;
- ii. all official acts must be actuated by public interest, and should inspire public confidence;
- iii. generally, the State should not grant contracts by private negotiation (subject to certain exceptions based on the nature of the trade, emergency circumstances, single source supply, etc.); and
- iv. appearance of public justice is as important as doing justice (i.e. government actions should not only be fair but should also be seen to be fair, and nothing should be done which gives an impression of bias, favoritism or nepotism).

The regulatory framework covers all contracts offered by the government at the central, state or local level. Examples of types of contracts covered include PPP contracts, concession agreements, operation and maintenance contracts, engineering procurement and construction contracts, supply of equipment, supply of services, transfer of technology, etc.

4.1 Sectors Specific Special Rules in Procurement :

There is no comprehensive central legislation exclusively governing public procurement in India. Instead, the public procurement regime comprises a framework of overlapping administrative rules and guidelines, sector-specific manuals and state-specific legislation.

- i. **Defence:** Governed by the Defence Procurement Procedure, 2016 (DPP) and the Defence Procurement Manual 2009 (as amended from time to time) which envisage various modes of

procurement including indigenous, capital, local purchase, etc.

- ii. **Railways:** Governed by a number of specific laws and uses the Indian Railway e-Procurement Systems (IREPS) for procurement.
- iii. **Energy:** New Exploration Licensing Policy (NELP) under the Petroleum and Natural Gas Regulatory Act, 2006, provides for the evaluation of bids according to a quantitative bid evaluation criterion.
- iv. **Electronics:** The Preference for Domestically Manufactured Electronic Products Policy (2013) applies to all ministries/departments (except the Ministry of Defence) for electronic product procurement for government purposes.
- v. **Electricity:** Electricity Act, 2003 provides for the determination of tariffs through bidding processes by distribution licensees for the procurement of power.
- vi. **Telecoms:** Guided by the National Telecom Policy (currently in the process of being re-worked to transition from physical to digital infrastructure. See question 8.1 below).
- vii. **Renewables:** The Ministry of New & Renewable Energy has released a National Policy on Biofuels and a Strategic Plan for New and Renewable Energy Sector. In 2017, the government issued guidelines for wind power procurement to enable the distribution licensees to procure wind power at competitive rates in a cost-effective manner.
- viii. **Micro, small and medium-sized enterprises (MSMEs):** Under the Public Procurement Policy for Micro and Small Enterprises Order 2012, a minimum of 20% of annual value of goods/services of the Central Government and public sector undertakings (PSUs) must be procured from micro and small enterprises (with further reservation of 4% in favour of MSMEs owned by 'backward classes').
- ix. **Pharmaceuticals:** Pharmaceutical Purchase Policy 2013 reserves the procurement of certain medicines from Central Public Sector Enterprises.

5.0 National Laws- Relevant to Public Procurement : Transparency, competition and curbing of probity issues are further ensured through:

- i. **Competition Act, 2002:** Penalises anti-competitive activities such as bid rigging, collusive bidding, cartelisation, and abuse of dominance.
- ii. **Right to Information Act, 2005:** Promotes transparency in government dealings by entitling Indian citizens to expeditiously procure information from the government through a "right to information" application.
- iii. **Integrity pact under the GFR and CVC guidelines:** Addresses probity in procurement activities including through the appointment of an external

monitor to mitigate corruption and ethical risks.

- iv. **Prevention of Corruption Act, 1988 and Prevention of Money Laundering Act, 2002:** Penalise bribery and money-laundering and provide for confiscation of property derived from money-laundering and other illicit activities.

6.0 Opportunities : One of such major initiative of Government of India (GOI) is that, foreign investors are today being granted greater access to the breadth of India's market than ever before. GOI has further liberalized investment and increased foreign direct investment inflow into India, easing investment caps and opening up previously restricted sectors to overseas investors. Another such an initiative towards modernizing existing infrastructure and equipment has also resulted in a number of procurement opportunities. Other new initiatives such as "Digital India" and "Make in India" are geared towards improved physical and social infrastructure, connectivity and local design and manufacturing capability. Nonetheless, working with the government can be a mixed bag of opportunities and challenges, and business exposure to the public sector is not without legal and compliance risks.

7.0 Challenges and Concerns : The principle underlying India's public procurement regime is the acquisition of materials and services of specified quality at the most competitive prices, in a transparent and non-arbitrary manner. Nonetheless, the absence of a central procurement regulation enabling procuring authorities with scope to tweak guidelines and contract format, leads to confusion on one hand and rigidity on the other. In fact, different agencies may even prescribe varying qualification criteria, financial terms, selection procedures etc. for similar public sector work.

Suppliers supplying goods and services to the Indian government must carefully navigate the convoluted procurement framework. Falling foul, inadvertently or otherwise, of any procurement conditions under the tender documents or the aforementioned rules and guidelines could result in the tender award being challenged / disqualified and the contract cancellation, and the supplier being blacklisted for up to 3 years.

In addition, supplying to the government may involve some unique risks and practical concerns, such as (1) Slow and complex tender process (2) Delayed decision – making, (3) Limited scope of negotiations (4) Legality in use of agents etc.

8.0 Conclusions : In the absence of any specific law, public procurement and other related financial matters are governed by GFR 2017 promulgated by the Ministry of Finance. These rules are applicable to all central ministries and their attached and subordinate bodies. These are also deemed to be applicable to the autonomous bodies which do not have their own government-approved financial rules.

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LEGAL ASPECTS OF PUBLIC PROCUREMENT

D.K.SINGH, DEPUTY DIRECTOR GENERAL, DGHS

Introduction : A Procurement Contract, besides being a commercial transaction, is also a legal transaction. There are a large number of laws that may affect various commercial aspects of Public Procurement Contracts. A public procurement professional is expected to have a working knowledge of the following basic laws for procurement. However, he is not expected to be a legal expert. Other laws will be discussed in subsequent modules.

1. Indian Contracts Act, 1872
2. Sale of Goods Act, 1930 and
3. Arbitration and Conciliation Act, 1996

If standard contract forms are used, the procurement official, with this working knowledge can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the Standard Contract Form is to be drafted, appropriate legal professional may be associated at an early stage.

Salient Features of the Indian Contract Act, 1872

Three Steps for Concluding Contract: To initiate procurement, a "Notice Inviting Tender (NIT)", is to be issued. As per the Indian Contract Act (The Act) – this is legally called a "Proposal" made by the First Party (Procuring Agency). This is the first of the three steps as per the Act required for concluding a contract. In response to this, one or more bidders submit their bids – legally this is an "Offer" from the Second Party (Bidder) – as the second step of the three steps. Finally, one of the "Offers" is selected by the First Party (Procuring Agency) and an "Acceptance" is conveyed to the Second Party (Bidder). This is the last step in concluding a contract. With the acceptance, the "Offer" of the Second Party (Bidder) now assumes a status of a legal "Promise" and the Second Party (Bidder) acquires the legal liabilities of a "Promisor". The First Party (Procuring Agency) acquires legal rights of a "Promisee". The set of three steps - Proposal, Offer and Acceptance is called an "Agreement". Any legally enforceable "Agreement" is called a "Contract". This is how contracts get concluded with this three-step process.

Counter-Offers and Negotiations: In this basic three-step process, it is assumed that the "Acceptance" of the "Offer" is given in toto, without any deviation. Thus, the contract gets concluded, without the need of any acknowledgement of the acceptance, from the Second Party (Bidder). In normal situations, this is seldom the case. The acceptance is at variance with the offer in many minor issues, like change in language of the clauses etc.

In such a situation, the contract does not get automatically concluded with the "Acceptance". It is legally important in such a situation to obtain the written acknowledgement or signatures on the Contract from the Second Party (Bidder). This is the normal commercial practice.

There could even be major variations in Acceptance of Offer – even the price; financial terms or the delivery terms may not be totally accepted. In such situations, the chain of three steps gets broken and the last-step in the sequence, which is "Acceptance", reverts to the legal status of a Second Step – a "Counter-offer". As per law, the Second Party or Bidder's original "Offer" loses its legal validity. The Bidder does not remain bound by his 'Promise' or "Offer". Now, the contract would get concluded only after, an "Acceptance" of the "Counter-offer" (as the third step – that too without variation), by the Second Party (Bidder) – and he is free not to do so. It is important to avoid such an uncertain legal position. Therefore, when the second party (Bidder) is invited for price negotiations; a legally worded undertaking is taken from him, without which negotiation is not started – that, in case of failure of negotiations, the Second Party (Bidder) would keep its original offer valid for acceptance, for a specified period.

Legal Concept of Completion of Communication of Proposal, Offer and Acceptance: Disputes do arise as to the point of time, when a communication of Proposal, Offer or Acceptance thereof, is legally complete and binding on either party. These legal stipulations often become very crucial.

The communication of a proposal or Offer is complete, when it reaches the person to whom it is made. Thus, a bid from a bidder is effective only when it reaches (as per records) the First Party (Procuring Agency). Hence, if an offer sent by post, reaches the First Party (Procuring Agency), after the tender closing time; he is not responsible for the postal delays, irrespective of proof produced by the sender that it was sent well in time. The intervening period is the responsibility of the bidder.

The case of completion of communication of an acceptance is a diametrically opposite legal stipulation. It is different for the purpose of respective legal liabilities of the Bidder and Procuring Agency. It is considered complete, for the purpose of legal liability of the Second Party (Bidder), when it is put into transmission by the First Party (Procuring Agency) so as to be out of his

power. However, for the purpose of legal liability of the First Party (Procuring Agency), it is considered complete, when it reaches the Second Party (Bidder). Thus, the time the First Party (Procuring Agency) delivers an Acceptance of Offer to Post/Courier – he can insist that the acceptance is complete and the Second Party (Bidder) becomes bound by his promise – although it may have not reached him yet. However, the Second Party (Bidder), cannot take his Offer to have been accepted till it reaches him and the First Party (Procuring Agency) can still revoke his acceptance, during this interim period. This is not how a layman would understand completeness of communications – but this has very important legal ramification for the Procuring Agency and Bidder.

Revocation of Offer or Acceptance: The communication of a revocation of an offer by the Second Party (Bidder) or revocation of acceptance by the First Party (Procuring Agency) has legal provisions similar to that of Communication of Acceptance in the paragraph above. Therefore, it is legal for the Second Party (Bidder) to revoke his offer at any time before the communication of its acceptance is complete, but not afterwards. However, administrative actions like forfeiture of Earnest Money Deposit or cancellation of vendor registration/debarment can still happen. An acceptance can be revoked by the First Party (Procuring Agency) at any time before the communication of acceptance reaches the Second Party (Bidder), but not afterwards.

Pre-Requisites for “Agreement” to Become Legally Enforceable: As per law, the pre-requisites for an “Agreement” to become legally enforceable – so that it becomes a Contract are:

Must Have a “Consideration of Promise”: The Bidder’s “Promise” to supply required material is against an expectation of payment from the First Party (Procuring Agency). This expectation of payment is called the “Consideration for the Promise” and the “Supply of Materials” is the “Object of the Promise”. Similarly, the purchasing party with his acceptance of the “Offer” implies a “Reciprocal Promise” to make the payment (object of the reciprocal promise) for the “Consideration” of supply of the required goods. A “Promise” or a “Reciprocal Promise” must have a “Consideration” for it to be a legally enforceable contract. Thus, an offer to supply materials free of cost is not a legal contract. Therefore, for honorary appointments, a payment of “Rs 1 per month” is added to make the appointment a legally enforceable contract.

Must Have Legal Intentions and Formalities: It should be clear from the context and formalities of the proposal or offer that the intention is to create a legal contract. Agreements in which the meaning is not certain, or not capable of being made certain, are void.

Must Have Free Consent of the Parties: Any agreement obtained without the “Free” consent of parties is not legally enforceable. Consent is not free when it involves:

- **Coercion:** “Coercion” is the committing, or

threatening to commit, any act forbidden by the Indian Penal Code, 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement

- **Undue Influence:** “Undue influence” implies that the relations subsisting between the parties are such, that one of the parties is in a position to dominate the will of the other and uses that position, to obtain an unfair advantage over the other
- **Fraud:** It is any act by a party either of declaration of a fact known to him to be false; or concealment of a detrimental fact known to him; or any other act by him, with an intention to deceive or to induce other party to enter into the contract
- **Misrepresentation:** Presentation of a true fact (or any other act) by one party, in a manner not warranted by the information available to him, to gain an advantage for himself; or to mislead the other party to make a mistake or come to a wrong understanding
- **Mistake:** This is a situation when both the parties are under mistake regarding a matter of fact

Parties should be Competent to Contract: The parties are competent to contract if they are of:

- **Age of Majority:** Persons below the age of 18 years are not legally competent to contract
- **Sound Mind:** A contract with a person who is of unsound mind at the time of signing the contract would not be a legal Contract
- **Not Barred by Law:** The party must not be barred by any other law, from entering into a contract – as can happen to a person who is declared bankrupt.

Must Have Lawful Consideration and Object: Consideration or the Object of an Agreement is not lawful if it is partly or fully forbidden by law; or is of such nature that, if permitted it would defeat the provisions of any law; or is fraudulent; or if it involves or implies, injury to the person or property of another; or if it is immoral, or opposed to public policy.

Concept of “Time is the Essence of the Contract” and Liquidated Damages: If a contractor fails to perform, as per the time period specified therein, The Procuring Agency has the right to cancel, the unperformed part of the contract. However, this right is available only if, it is made clear in the contract that “time is the essence of the contract”. Therefore, the contract must have a clear clause stating this intention. If such a clause is not there; or the Procuring Agency does not wish to cancel the contract; the person or organisation is entitled for compensation from the contractor for any loss incurred due to such delayed performance. Normally, compensation for loss due to delay is covered in a clause, called the “Liquidated Damages Clause”. This stipulates

a fixed percentage of the value of the delayed portion, for every unit of time of delay, to be recovered. This is usually fixed as ½% of the value of delayed goods, per week of delay, subject to a maximum of 10%. As per the current law, the Procuring Agency need not prove that he has incurred such a loss, if the Liquidated Damages clause is provided. Damages for delay can only be claimed, if the contractor is allowed to perform the delayed portion of contract, by granting an extension in time. If the Procuring Agency exercises the right to cancel the contract as a result of delay, such damages cannot be recovered – only damages for Breach of Contract, discussed later can be recovered then.

Need for Care When Accepting Delayed Performance of Contract: If, in case of a contract voidable on account of the contractor's delay in performance of the contract, the Procuring Agency accepts (or indirectly indicates acceptability of) performance of the contract at any time other than the agreed time, the Procuring Agency forfeits its right to claim compensation for any loss due to the delay, unless, at the time of acceptance of delayed performance of contract, the agency gives notice to the contractor, of its intention to claim compensation for any loss. Once the contract performance is delayed, correspondence with the contractor, even for innocent enquiry about the status of performance, would cost the Procuring Agency his rights, unless it is written that, "This is issued without any prejudice to our rights to recover compensation for the loss due to the delay".

Modifications of the Contract Conditions: Once the contract is concluded, the parties can mutually agree to substitute the contract with a new one; or cancel (rescind) it partly or fully; or vary its terms of contract. These in legal terms are respectively called, novation, rescission, and alteration of the contract. Under the law, if the Procuring Agency neglects; or refuses to provide to the contractor, reasonable facilities as per the contract for the performance of contract, the contractor is excused by such neglect or refusal as to non-performance caused thereby. Thus, mainly in Works and Consultancy Contracts, the Procuring Agency must be alert to provide all facilities promised to be provided in the contract, to prevent failure of the contract.

Breach of Contract: When a contract has been broken, the party who suffers by such breach is entitled to receive compensation from the party that has broken the contract, compensation for any loss or damage caused to him thereby. The right to claim such damages are not extinguished, if the Procuring Agency rightfully cancels the contract as a result of the breach. It is also permitted to specify in the contract, a specified amount of damaged (called Pre-determined Damages), which will be recovered in case of breach of contract. The Procuring Agency is not required to prove, that he has incurred such a loss. It can also be provided that the Procuring Agency has the right to enter into a new contract for the same material from alternative sources after cancelling the breached contract, with a notice to the defaulter that the difference in the cost between the two contracts shall be recovered from the defaulter. This is called "Purchase

at the Risk and Cost" of the defaulter – or simply risk-purchase. No compensation can be claimed for any remote, consequential and indirect loss of damage sustained due to the breach.

Concept of Force-Majeure: In case the contract becomes impossible to be performed, for reasons beyond the control of the contractor (like act of God, war, Government actions), then he is neither liable for delays nor for breach of contract. These are called Force-Majeure (FM) conditions. A legally worded FM clause is normally included in the Conditions of the Contract. As per this clause, the contractor has to keep the Procuring Agency informed of such a situation arising and claiming exemption from timely performance. There is also a provision to cancel the contract, without damages on either side, if such conditions persist beyond a specified period.

Law of Agency – Agents and Principals: When an authorised person enters into a contract, on behalf of his organisation (as a Procuring Agency or Bidder) with a "Third Party", he is acting (what is legally called) as an "Agent" of his organisation, which is called the "Principal". Arising out of the ensuing contract, is the Agent liable to face claims for compensation or other legal repercussions, in his personal capacity from the Third Party or his Principal, if disputes arise in the contract? For example, can the Third Party sue him by name in a court and seek compensation? Such issues are covered in Law of Agency, which is laid down in the Indian Contract Act. A contractor in a Works Contract or Consultant in a Consultancy Contract is also deemed an "Agent" of the Procuring Agency, who is the Principal. They also would be entitled to the safeguards available to an Agent.

Agent Has No Liability: In normal course, only the Principal (not the agent in his personal capacity) is responsible for consequences and entitled to benefits arising from the bona fide actions of his authorised Agent.

The Principal is bound to indemnify his agent against the consequences of all lawful acts done in good faith by such agent in exercise of the authority conferred upon him. This applies even if it causes injury to the rights of third parties.

Conditions When Agent is Personally Liable: An agent is bound to conduct the business of his Principal, according to the directions given by the Principal, or, in the absence of any such directions. The agent has to conduct the business with as much skill and reasonable diligence, as is generally required by persons engaged in similar business according to the custom, which prevails in doing business of the same kind. Otherwise, he is liable to make compensation to his Principal in respect of the direct consequences of his own neglect, want of skill or misconduct.

Where a Principal employs an Agent to do an act, which is criminal, the Principal is not liable to the agent, irrespective of any express or implied promise to

indemnify him against the consequences of that act. Thus, if a Bidder instructs his agent to resort to bribery and he does so, the agent cannot claim compensation from his Principal, if he is caught.

Misrepresentations or frauds, committed, by agents in matters, which do not fall within their authority, do not affect their Principals. In such cases, the agent himself would be liable for adverse consequences.

Rights of Other Party's Dealing with Agent of Principal:

Normally, the other party (Contractor or Procuring Agency) would have the same responsibilities and liabilities; as if the contract has been entered into, directly with the Principal. Contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the Principal in person.

Even misrepresentations or frauds committed by authorised agents acting in the course of their business for their principals have the same effect on agreements made by such agents, as if such misrepresentations or frauds had been made or committed by the Principals in person.

In cases where the agent is personally liable, as mentioned in sub-para above, a person dealing with him may hold either him or his Principal, or both of them, liable.

Precautions Required: However, it is important for the Procuring Agency to call for written documents regarding authority of the person signing the bids and contract on behalf of the Bidder, so that the interests of Procuring Agencies are protected. This is normally a part of Instructions to Bidders. It is also important in Works and Consultancy Contracts to specify clearly that the contract does not amount to an Agent– Principal relationship.

Salient Features of the Sale of Goods Act, 1930

Scope: Agreements for the sale of goods are governed by the general principles of the Contract Law. A contract for sale of goods has, however, certain peculiar features, such as transfer of ownership of the goods and quality aspects implied under a contract for sale of goods, which are not covered in Contract Act. These peculiarities are the subject matter of the provisions of the Sale of Goods Act, 1930. In this Act, the two parties to the contract are called "Seller" and "Buyer". This Act defines Goods for the purpose of applicability of this Act, as every kind of movable property, including stock and shares, growing crops, goodwill, patents, trademarks, electricity, water, gas and so on, all that can be exchanged for money - but not any kind of immovable property like real estate.

Concept of Transfer of Property (Passing of Title): Proprietary (ownership) rights and obligations in "Goods" are called legally "Title to Goods" or "Property in Goods". The meaning of property here is different from common connotation of the word. At what point of time or stage in a contract does this passing of Title of (Property in)

Goods happen is laid down in this Act. This ownership of goods is different from 'possession of goods', which means the physical custody or control of goods. Delivery of goods is only a transfer of 'Possession of Goods'. It may or may not coincide with Passing of Title in Goods. This distinction is very important in Procurement.

The transfer of property in goods, from the seller to the buyer is the essence of Procurement of Goods. Therefore, the moment when the property in goods passes from the seller to the buyer is significant for following reasons:

Ownership: The moment the property in goods passes, the seller ceases to be the owner and the buyer acquires the ownership. The buyer can exercise the proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods and soon.

Concept of "Res Prit Domine" – Risk Follows Ownership:

This concept simply means that as a general rule, risk follows ownership, irrespective of whether the delivery (or transfer of possession of goods) has been made or not. If the goods are damaged or destroyed, the loss shall be borne by the person who was the owner of the goods at that time – irrespective of whosoever is in the "Possession of the Goods".

Action Against Third Parties — When the goods are in any way damaged or destroyed by the action of third parties, it is only the owner of the goods who can take action (claim, litigation) against the third parties.

Time at Which Property in Goods is Transferred: The property in goods is transferred to the buyer at such time as the parties to the contract intend this to happen, as recorded in the terms of the contract. This needs neither to coincide with the point when payment is made; nor with the delivery of Goods; and not even with the point of time, when the seller dispatches the goods.

Documents of Title to Goods: These are voucher, bill, document, receipt, cash memo, bill of lading, lorry receipt, railway receipt, or any such acknowledgements, which prove the ownership of the goods that in the ordinary course of business, buyer may receive. These are called documents of title to goods.

Terms of Delivery Signifying Transfer of Property in Goods:

There are standardised terms of delivery defining the passing of property (these also determine responsibility of freight, insurance and so on, which are also important aspects in a Contract). Some of these terms are:

- **EXW** – Ex Works
- **FAS** – Free Alongside Ship
- **FOB** – Free On Board (over the rails of Ship)
- **FOR Dispatching Station** – Free On Rail at the Station of Dispatching
- **FOR Destination** – Free On Rail at the Station of Destination

- **Free at Destination** – Free at the Destination place named in the Contract.

The places mentioned in the above terms are the places where Passing of Title happens, and the rights as well as risks of ownership of goods fall upon the buyer.

Concepts of Conditions/Warranties: A contract for sale usually would contain a number of terms, specifying the nature, quality and feature of the good being sold. All terms may not be of equal importance. Some of the terms may form the core of the contract, while the others may be surrounding and peripheral. For example, in a contract to buy pencils of a particular brand and model, and of a particular external colour, the term that the pencil must be of a particular brand and model is the core of the contract. The external colour of the pencil is not of central importance. In the Act, the core part of a contract is called the **condition**; and the terms which are not essential to a contract, are called **warranties**. (The legal concept of warranties here is different from prevalent meaning of the word). The condition is the core of a contract and its breach would be a breach of the contract. Thus, for the violation of a condition, the contract can be repudiated. On the other hand, in the case of a breach of warranty, the contract has been mostly fulfilled and cannot be repudiated – but the buyer can claim damages. In a given situation, whether a stipulation is a condition or warranty would depend on the construction of the contract. The condition or warranty can be explicitly written in the contract or they may be implied.

Doctrine of Caveat Emptor: Sale of Goods Act lays down this important concept that the buyer must act with due diligence when buying goods. It is not seller's duty to point out the defects in goods. This is a doctrine, which is not in consonance with modern times, but unfortunately is a legal position. However, this does not apply if the buyer's consent to buy is obtained by the seller, by knowingly concealing the defects, which could not have been discovered by the buyer reasonably at the time of purchase. The Caveat Emptor is also diluted under some implied conditions in a contract for sale. These are not normally well known to the procurement professionals. However, the implied conditions, where buyer gets some protection under this Act are:

- **Condition as to Description** — In a contract of sale by description, there is an implied condition that the goods shall correspond with the description.
- **Condition as to Merchantability** — Where the goods are bought by description from a seller, who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality. Merchantable quality ordinarily means that the goods should be such, as would be commercially saleable under the description by which they are known in the market at their full value. This implied condition of merchantability also applies to purchase as per brand/model name or trade/patent mark.

- **Condition as to Fitness for the Particular Usage** — Where the buyer, expressly or by implication, makes known to the seller, the particular usage for which goods are required, in a manner to show that the buyer relies on the seller's skill or judgement and where the goods are of a description, which it is in the customary course of the seller's business to supply, there is an implied condition, that the goods shall be reasonably fit for such usage. This condition is very useful in buying complex technical equipment, where besides description and specification, the usage and expectation of performance may also be stated. This will dilute the caveat emptor.
- **Fitness for Particular Usage Implied by Custom or Trade:** In certain sale contracts, for an item, which has a standard usage customarily or in trade, the specific usage is taken to be the implied condition of sale. For instance, if a person buys a watch or a detergent soap, the specific usage for which it is purchased is implied from the thing itself; the buyer need not disclose the purpose to the seller.
- **Condition as to Wholesomeness** — In case of sale of eatable provisions and foodstuff, there is another implied condition, that the goods shall be wholesome. Thus, the provisions or foodstuff must not only correspond to their description, but must also be merchantable and wholesome. By 'wholesomeness', it means that goods must be fit and beneficial for human consumption.

Provision of the Act Regarding Statutory Variations in Taxes and Duties: Statutory variations in the Taxes and Duties (customs duties, excise duty, tax on the sale or purchase of goods), after the making of any contract has to be borne by the buyer, even if there is no such express stipulation in the contract.

Salient Features of the Indian Arbitration and Conciliation Act, 1996

Indian Arbitration and Conciliation Act, 1996 provides for dispute settlement either by a process of Conciliation and/or by Arbitration. This Act is based on 'United Nation's Commission on International Trade Law (UNCITRAL) Model Arbitration Law'. Its objective is to minimise the supervisory role of courts in the arbitral process and to provide that every final arbitral award is enforced in the same manner, as if it was a decree of the court. It covers both international and domestic arbitration and conciliation.

Arbitration: Arbitration is one of the oldest methods of settling civil disputes; arising out and in the course of performance of the contract; between two or more persons, by reference of the dispute to an independent and impartial third person, called arbitrator; instead of litigating the matter in the usual way through the courts. It saves time and expense; avoids unnecessary technicalities and at the same time ensures "Substantial justice within the limits of the law".

Arbitrator, Arbitration and Arbitral Award: The person or persons appointed to determine differences and disputes are called the Arbitrator or Arbitral Tribunal. The proceedings before person or tribunal are called arbitration proceedings. The decision is called an 'award'. For the purpose of Law of Limitations, the arbitration for a particular dispute is deemed to have commenced on the date on which, a request for arbitration is received by the respondent.

Arbitration Agreement: It is an agreement by the parties to submit to arbitration all or certain disputes, which have arisen or which may arise between them, in respect of a defined legal relationship, whether contractual or not non-contractual. The dispute resolution method of arbitration, as per the Arbitration and Conciliation Act, can be invoked only if; there is an Arbitration Agreement (in the form of an Arbitration Clause or a separate Arbitration Agreement) in the Contract. If there is such an agreement, Courts are barred from directly entertaining any litigation, in respect of such contracts, and are bound instead to refer the parties to arbitration.

Appointment and Composition of Arbitral Tribunal: Both the parties can mutually agree on the number of arbitrators (which cannot be even number) to be appointed. In case there is no agreement, a single (sole) arbitrator may be appointed. The parties can mutually agree on a procedure for appointing the arbitrator or arbitrators. Or else, in case of arbitration with three arbitrators, each party will appoint one arbitrator and the two appointed arbitrators will appoint the third arbitrator, who will act as a presiding arbitrator. If one party fails to appoint arbitrator within 30 days, or if the two appointed arbitrators fail to agree on the third arbitrator, then the Court may appoint any person or institution as arbitrator. In case of international commercial dispute, the application for appointment of arbitrator has to be made to the Chief Justice of India. In case of other domestic disputes, application has to be made to the Chief Justice of High Court within whose jurisdiction the parties are situated.

Challenge to Appointment of Arbitrator: An arbitrator is expected to be independent and impartial. If there are some circumstances, due to which his independence or impartiality can be challenged, he must disclose the circumstances before his appointment. Appointment of arbitrator cannot be challenged on any ground, except when there is justifiable doubt as to arbitrator's independence or impartiality or when he does not possess the qualifications for the arbitrator agreed to by the parties. The challenge to appointment has to be decided by the arbitrator himself. If he does not accept the challenge, the arbitration can continue and the arbitrator can make the arbitral award. However, in such a case, application for setting aside arbitral award can be made to Court after the award is made by the arbitrator. Thus, the other party cannot stall further arbitration proceedings by rushing to court.

Conduct of Arbitral Proceedings: The parties are free to agree on the procedure to be followed for conducting proceedings, location, language of hearings and written proceedings. Failing any agreement, the Arbitral Tribunal may decide itself on these aspects. The parties shall be treated with equality and each party shall be given a full opportunity to present its case. Arbitral Tribunal shall observe the rules of natural justice but is bound neither by Civil Procedure Code 1908 nor by Indian Evidence Act 1872. The Limitation Act, 1963 is applicable from the date of commencement of arbitral proceedings. Arbitral tribunals have powers to do the following:

- Determine admissibility, relevance, materiality and weight of any evidence.
- Decide on their own jurisdiction
- Decide on interim measures
- Termination of proceedings
- Seek court assistance in taking evidence

Arbitral Award: The decision of Arbitral Tribunal is termed as 'Arbitral Award'. The decision of Arbitral Tribunal shall be by majority. The arbitral award shall be in writing, mentioning the place and date, and signed by the members of the tribunal. It must state the reasons for the award. A copy of the award should be given to each party. The Arbitral Tribunal can also make interim awards. The Arbitral Award is enforceable in the same manner as if it were a decree of the Court.

Recourse Against Arbitral Award: Recourse to a court against an arbitration award can be made by an application (within three months from the date of the arbitral award). It can be made only on the grounds specified in the Act. They are the party was under some incapacity; arbitration agreement was not valid; proper opportunity was not given to present the case; award dealt with disputes not falling within the terms of reference of arbitrator; composition of the Arbitral Tribunal is not as per agreement of parties; subject matter of dispute is not capable of settlement through arbitration under the law or the Arbitral Award is in conflict with the Public Policy.

Conciliation: This is a new concept added in the Act for settlement of disputes. The party initiating conciliation shall send a written invitation to the other party to conciliate and proceedings shall commence when the other party accepts the initiation to conciliation. The parties may agree on the name of a sole conciliator or each party may appoint one conciliator. The conciliation shall assist the parties in reaching an amicable settlement of their dispute. When the parties sign the settlement agreement, it shall be final and binding on the parties. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each party. This process has not yet come into common use.

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PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA) TO PROVIDE FOR PURCHASE PREFERENCE

No. A-1/2021-FSC-Part(5)
Government of India
Ministry of Power

Shram Shakti Bhawan, New Delhi
Dated: 16th November, 2021

ORDER

Subject: Public Procurement (Preference to Make in India) to provide for Purchase Preference (linked with local content) in respect of Power Sector.

Reference: Department for Promotion of Industry and Internal Trade (DPIIT) Notification No. P-45021/2/2017-PP (BE-II) dated 16.09.2020.

The Government of India, Department for Promotion of Industry and Internal Trade (DPIIT) issued Public Procurement (Preference to Make in India), Order 2017, for encouraging 'Make in India' and promoting manufacturing and production of goods and services in India with a view to enhancing income and employment. Subsequently, DPIIT vide order No. P-45021/2/2017-PP (BE-II) dated 4th June, 2020 and further vide order dated 16th September, 2020 have issued the revised Public Procurement (Preference to Make in India) Order 2017.

2. In light of the Public Procurement (Preference to Make in India) Order 2017, this Ministry had notified purchase preference (linked with local content) for Hydro and Transmission sectors vide Order No. 11/05/2018-Coord dated 20.12.2018, for Thermal sector vide Order dated 28.12.2018 and for Distribution sector vide Order dated 17.03.2020. Further, a combined order dated 04.04.2020 was also issued in supersession of all previous orders to indicate equipment/material/components for which there was sufficient local capacity and competition and also to indicate conditions for including suitably in the tenders to be issued by the procurers. In furtherance of Para 19 of the DPIIT Notification No. P-45021/2/2017-PP(BE-II) dated 04.06.2020, Ministry of Power (MoP) issued a revised comprehensive Order dated 28.07.2020 (Annexure-I amended by order dated 17.09.2020).

3. DPIIT Notification No. P-45021/2/2017-PP(BE-II) dated 16.09.2020 has further revised its order dated 04.06.2020. Therefore, in supersession of all the aforementioned orders including order No.10/1/2019-St.Th. (Part-II) dated 20.03.2020 issued by this Ministry, the following has been decided:

- i. For the purpose of this order, the definitions of various terms used in the order, and provisions relating to (i) Eligibility of 'Class-I local supplier'/'Class-II local supplier'/'Non-local suppliers' for different types of procurement, (ii) purchase preference (iii) exemption to small purchases and (iv) margin of purchase preference shall be the same as in DPIIT order dated 16.09.2020, referred to above and extracts of the same is given at **Appendix**.
- ii. In procurement of all goods and services or works in respect of which there is sufficient local capacity and local competition as in **Annexure-I**, only "Class-I local supplier" shall be eligible to bid irrespective of purchase value. "Class-I local supplier" is a supplier or service provider whose goods, services or works offered for procurement meets the Minimum Local Content (MLC) as prescribed in Annexure-I of this order. "Class-II local supplier" means a

supplier, as defined by DPIIT in its Order No. P-45021/2/2017-PP (BE-II) dated 16-09-2020.

- iii. In the procurement of all goods and services or works other than those listed in Annexure-I, only "Class-I local supplier" and "Class-II local supplier" as defined in the order of this Ministry herewith shall be eligible to bid in procurement undertaken by procuring entities, except when Global Tender Enquiry has been issued. In Global tender enquiries, "Non-local suppliers" shall also be eligible to bid along with "Class-I local suppliers" and "Class-II local suppliers". In procurement of all goods, services or works not covered by sub-para 3(ii) above, and with estimated value of purchases less than Rs. 200 crores, in accordance with Rule 161(iv) of GFR, 2017, Global Tender Enquiry(GTE) shall not be issued except with the approval of the competent authority as designated by Department of Expenditure.
- iv. For the purpose of this order, 'Works' means all works as per Rule 130 of GFR- 2017, and will also include '*turnkey works*', Engineering, Procurement and Construction (EPC) contracts and service contracts including System Integrator (SI) contracts.

4. The list of items, in respect of which, local capacity with sufficient competition exists as per **Annexure-I**, will be reviewed at regular intervals with a view to increase number of items in this list and also to increase the MLC for each item, wherever it is less than 100%.

5. Purchase preference shall be given to local suppliers in accordance with **para 3A** of DPIIT Order dated 16.09.2020, and extracts of the same are given at **Appendix**.

6. Further, it has been decided to constitute a committee for independent verification of self-declarations and auditor's / accountant's certificates on random basis and in the case of complaints. The composition of the committee is given below:

Member (Planning), Central Electricity Authority (CEA)	Chairperson
Chief Engineer (PSETD), CEA	Member
Chief Engineer (HETD), CEA	Member
Chief Engineer (TETD), CEA	Member
Chief Engineer (DP&R), CEA	Member
As may be co-opted by CEA	External Expert
Chief Engineer (R&D), CEA	Convener

7. Further, it has also been decided to constitute a committee to examine the grievances in consultation with stakeholders and recommend appropriate actions to the Competent Authority in MoP. The composition of the Committee is given below:

Chairperson, CEA	Chairperson
Member (Hydro), CEA	Member

Member (Power System), CEA	Member
Member (Thermal), CEA	Convener

8. The complaint fee of Rs. 2 Lakhs or 1% of the value of the local item being procured (subject to maximum of Rs. 5 Lakhs), whichever is higher, shall be paid in the form of Demand Draft, drawn in favour of **PAO, CEA, New Delhi**. In case the complaint is found to be incorrect, the complaint fee shall be forfeited. In case, the complaint is upheld and found to be substantially correct, the deposited fee of the complainant would be refunded without any interest.

9. All other conditions, not stipulated in this order, shall be as laid down in the DPIIT's order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020.

10. This order shall be applicable in respect of the procurement made by all attached or subordinate offices or autonomous bodies under the Government of India including Government Companies as defined in the Companies Act, and /or the States and Local Bodies making procurement under all Central Schemes/ Central Sector Schemes where the Scheme is fully or partially funded by the Government of India. The aforesaid orders shall also be applicable in respect of projects wherein funding of goods, services or works is by Power Finance Corporation (PFC) /Rural Electrification Corporation (REC) and any Financial Institution in which Government of India/ State Government share exists. This order shall be applicable to Tariff Based Competitive Bidding (TBCB) projects also. Procuring entities as defined in the DPIIT's Order dated 16.09.2020 are advised to revise their tender documents to fully comply with the said DPIIT's Order and the subsequent Orders that would be issued in this regard by DPIIT/ this Ministry from time to time.

11. All tenders for procurement by Central Government Agencies or the States and Local Bodies, as the case may be, have to be certified for compliance of the Public Procurement (Preference to Make in India) 'PPP-MII' Order by the concerned procurement officer of the Government Organization before uploading the same on the portal.

12. Exemption from meeting the stipulated local content is allowed as per clause 13 and 13A of PPP-MII Order dated 16.09.2020, if the manufacturer declares that the item is manufactured in India under a License from a foreign Manufacturer who holds Intellectual Property Rights (IPRs) and there is Transfer of Technology (ToT) with phasing to increase Minimum Local Content. For such items, if any CPSE under the administration of Ministry of Power requests exemption for any item, it shall be considered by Ministry of Power, on case to case basis.

13. In order to further encourage Make in India initiatives and promote manufacturing and production of goods and services in India, general guidelines as enclosed at **Annexure-II** may be adopted in an appropriate manner according to the circumstances by the procuring entities in their tendering process.

14. The procurers may specify the higher values of MLC than those specified in this Order in respect of goods, services or works covered in their tenders and award the weightage to the product of higher MLC for which they have to specify the criteria beforehand in their tender. The values given in Annexure-I are the minimum prescribed values for becoming a class-I local supplier for the products indicated therein.

15. This issues with the approval of Hon'ble Minister for Power and New & Renewable Energy.



(S. Majumdar)

Under Secretary to the Government of India

Tele No. 011- 23356938

To:

1. Secretary to Government of India (All Ministries/ Departments of Government of India) (As per list)
2. Secretary (Coordination), Cabinet Secretariat
3. CEO, NITI Aayog
4. Chief Secretaries of all States/ UTs
5. Comptroller and Auditor General of India
6. Secretary, DPIIT, Chairman of Standing Committee for implementation of Public Procurement Order, 2017
7. Director General, Bureau of Indian Standards (BIS)
8. Joint Secretary, DPIIT, Member-Convener of Standing Committee for implementation of Public Procurement Order, 2017
9. Chairperson, CEA
10. CMDs of CPSEs, CMD NLC, Chairman of DVC/ BBMB/ EESL, DGs of BEE/ CPRI/ NPTI
11. All Additional Secretaries/ JSs/ EA/ CE, Ministry of Power

Copy to:

Director (Technical), NIC with a request to publish the Order on the website of Ministry of Power

Extracts of important provisions contained in DPIIT Order No. P-45021/2/2017-PP (BE-II) dated 16-09-2020

1. Definitions (Para 2 of DPIIT order):

'Local content' means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-I local supplier' under this Order.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for "Class-I Local supplier" under this Order.

'Non-Local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under this Order.

'L1' means the lowest tender or lowest bid or the lowest quotation received in a tender, bidding process or other procurement solicitation as adjudged in the evaluation process as per the tender or other procurement solicitation.

'Margin of purchase preference' means the maximum extent to which the price quoted by a 'Class-I local supplier' may be above the L1 for the purpose of purchase preference.

'Nodal Ministry' means the Ministry or Department identified pursuant to this order in respect of a particular item of goods or services or works.

'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.

'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

2. Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement (Para 3 of DPIIT order)

(a) In procurement of all goods, services or works in respect of which the Nodal Ministry / Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', as defined under the Order, shall be eligible to bid irrespective of purchase value.

(b) Only 'Class-I local supplier' and 'Class-II local supplier', as defined under the Order, shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by 3(a) above, and with estimated value of purchases less than Rs 200 crores, in accordance with Rule 161(iv) of GFR, 2017 Global tender enquiry shall not

be issued except with the approval of competent authority as designated by Department of Expenditure.

(c) For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

3. Purchase Preference (Para 3A of DPIIT order)

(a) Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.

(b) In the procurements of goods or works, which are covered by para 3(b) of DPIIT Order No. P-45021/2/2017-PP(BE-II) dated 16-09-2021 and which are divisible in nature, the "Class-I local supplier" shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
- ii. If L1 bid is not a 'Class-I local supplier', 50% of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50% quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

(c) In the procurements of goods or works, which are covered by para 3(b) of DPIIT Order No. P-45021/2/2017-PP(BE-II) dated 16-09-2021 and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:

- iii. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1,
- iv. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
- v. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.

(d) "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

4. Applicability in tenders where contract is to be awarded to multiple bidders (Para 3B of DPIIT order)-

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

a) In case there is sufficient local capacity and competition for the items to be procured, as notified by the Nodal Ministry, only 'Class-I local supplier' shall be eligible to bid. As such, the multiple supplier who would be awarded the contract, should be all and only 'Class-I local suppliers'.

b) In other cases, 'Class-II local suppliers' and 'Non-Local suppliers' may also participate in the bidding process along with 'Class-I local supplier' as per provisions of this order.

c) If 'Class-I local supplier' qualify for award of contract for at least 50% of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class-I local supplier' do not qualify for award of the contract for at least 50% of the tendered quantity, purchase preference should be given to the 'Class-I local supplier' over 'Class-II local supplier'/'Non-local suppliers' provided that their quoted rate falls within 20% margin of purchase preference of the highest quoted bidder considered for award of contract so as to ensure that the 'Class-I local suppliers' taken in totality or considered for award of contract for at least 50% of the tendered quantity.

d) First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20% margin of purchase preference subject to its meeting the prescribed criteria for award of contract as also the constraints of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier' falling within 20% margin of purchase preference, and so on.

e) To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulate in sub-paras above.

5. Exemption of small purchases (Para 4 in DPIIT order): Procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from this Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.

6. Minimum Local Content (Para 5 in DPIIT order): The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50%. For 'Class-II local supplier', the local content requirement is minimum 20%. Nodal Ministry/Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/'Class-II local supplier'. For the item for which Nodal Ministry/Department has not prescribed higher minimum local content notification under the order, it shall be 50% and 20% for 'Class-I local supplier'/'Class-II local supplier' respectively.

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7. Vide DPIIT OM No. P-45021/102/2019-BE-IIPart(1) (E-50310) dated 4.03.2021 services such as transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. shall not be considered as local value addition. Bidders offering imported products will fall under the category of Non- local suppliers. They can't claim themselves as Class-I local suppliers/Class-II local suppliers by claiming the services such as transportation, insurance, installation, commissioning, training and after sales service support like AMC/CMC etc. as local value addition.
8. **Margin of Purchase Preference** (*Para 6 of DPIIT order*): The margin of purchase preference shall be 20%.
9. **Specifications in Tenders and other procurement solicitations** (*Para 10 of DPIIT order*):
- Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
 - Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
 - Procuring entities shall, within 2 months of the issue of this Order review all existing eligibility norms and conditions with reference to sub-paragraphs 'a' and 'b' above.
 - Reciprocity Clause:**
 - When a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc. it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action.
 - Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not be allowed to participate in Government procurement in India for all the items related to that nodal Ministry/Department, except for the list of items published by the Ministry/Department permitting their participation.
 - The stipulation in (ii) above shall be part of all tenders invited by the Central Government procuring entities stated in (i) above. All purchase on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/Department.
 - State Governments should be encouraged to incorporate similar provisions in their respective tenders.
 - The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
 - Specifying foreign certification/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/ or for any other reason, the same shall be done only after written approval of Secretary of Department concerned or any other authority having been designated such power by the Secretary of the Department concerned.
 - "All administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of PSEs/PSUs, for the next 5 years on their respective website."

Annexure-I

Sl. No.	Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition	Class-I Local Supplier (Minimum Local Content (%))
(A) Common items for Transmission, Distribution and Generation Sector		
1	Power Transformers (up to 765 kV, including Generator transformers)	60
2	Instrument Transformer (up to 765 kV)	60
3	Transformer Oil Dry Out System (TODOS)	60
4	Reactors up to 765 kV	60
5	Oil Impregnated Bushing (up to 400 kV)	60
6	Resin Insulated Paper (RIP) bushings (up to 145 kV)	50
7	Circuit Breakers (up to 765 kV AC - Alternating Current)	60
8	Disconnectors/Isolators (up to 765 kV AC)	60
9	Wave trap (up to 765 kV AC)	60
10	Oil Filled Distribution Transformers up to & Including 33 kV [Cold Rolled Grain Oriented (CRGO)/Amorphous, Aluminium/Copper wound]	60
11	Dry Type Distribution Transformer upto and including 33 kV (CRGO/Amorphous, Aluminium/Copper wound)	60
12	Conventional Conductor	60
13	Accessories for Conventional conductors	60
14	High Temperature/High Temperature Low Sag (HTLS) conductors (such as Composite core, GAP, ACSS, INVAR, AL59) and Accessories	60
15	Optical ground wire (OPGW) – all designs	60
16	Fiber Optic Terminal Equipment (FOTE) for OPGW	50
17	OPGW related Hardware and Accessories	60
18	Remote Terminal Unit (RTU)	50
19	Power Cables and accessories up to 33 kV	60
20	Control cables including accessories	60
21	XLPE Cables up to 220 kV	60
22	Substation Structures	60
23	Transmission Line Towers	60
24	Porcelain (Disc/Long Rod) Insulators	60
25	Bus Post Insulators (Porcelain)	60
26	Porcelain Disc Insulators with Room Temperature Vulcanisation (RTV) coating	50
27	Porcelain Longrod Insulators with Room Temperature Vulcanisation (RTV) coating	50
28	Hardware Fittings for Porcelain Insulators	60
29	Composite/Polymeric Long Rod Insulators	60
30	Hardware Fittings for Polymer Insulators	60
31	Bird Flight Diverter (BFD)	60
32	Power Line Carrier Communication (PLCC) System (up to 800 kV)	60
33	Gas Insulated Switchgear (up to 400 kV AC)	60
34	Gas Insulated Switchgear (above 400 kV AC)	50
35	Surge/Lightning Arrester (up to 765 kV AC)	60
36	Power Capacitors	60
37	Packaged Sub-station (6.6 kV to 33 kV)	60
38	Ring Main Unit (RMU) (up to 33 kV)	60
39	Medium Voltage (MV) GIS Panels (up to 33 kV)	60
40	Automation and Control System/Supervisory Control and data Acquisition (SCADA) System in Power System	50
41	Control and Relay Panel (including Digital/Numerical Relays)	50
42	Electrical Motors 0.37 kW to 1 MW	60
43	Energy Meters excluding smart meters	50
44	Control & power cables and Accessories (up to 1.1 kV)	60
45	Diesel Generating (DG) set	60

Sl. No.	Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition	Class-I Local Supplier (Minimum Local Content (%))
46	DC system (DC Battery & Battery Charger)	60
47	AC & DC Distribution Board	60
48	Indoor Air Insulated Switchgear (AIS) upto 33 kV	60
49	Poles (PCC, PSCC, Rolled Steel Joist, Rail Pole, Spun, Steel Tubular)	60
50	Material for Grounding/earthing system	60
51	Illumination system	60
52	Overhead Fault Sensing Indicator (FSI)	50
53	Power Quality Meters	50
54	Auxiliary Relays	50
55	Load Break Switch	50
(B) Hydro Sector		
56	Hydro Turbine & Associated equipment	
	a) Francis Turbine	60
	b) Kaplan Turbine	60
	c) Pelton Turbine	50
57	Main Inlet Valve & Associated Equipment	60
58	Penstock Protection Valve and Associated Equipment	60
59	Governing system & Accessories	60
60	Generator for Hydro Project & Associated Equipment	60
61	Static Excitation System	60
62	Workshop Equipment	60
63	Cooling Water System	60
64	Compressed Air System	60
65	Drainage/Dewatering System	60
66	Fire Protection System	60
67	Heating, Ventilation & Air Conditioning System (HVAC)	60
68	Oil Handling System	60
69	Mechanical Balance of Plant (BOP) Items	60
(C) Thermal Sector		
Boiler Auxiliaries		
70	Air Pre-Heater	60
71	Steam Coil Air Pre Heater (SCAPH)	60
72	Steam soot blowers [wall blowers & Long Retractable Soot Blower (LRSB)]	60
73	Auxiliary Steam Pressure Reducing & Desuperheating (PRDS)	60
74	Fuel oil system	60
75	Seal air Fan	60
76	Ducts and dampers	60
77	Duct expansion joints	60
78	Blowdown tanks	60
79	Coal burners and oil burners	60
80	Coal mills	60
81	Gear Box of Coal Mill	50
82	Coal feeders	60
83	Primary Air Fans	60
84	Forced Draft Fans	60
85	Induced Draft Fans	60
86	Forced Draft (FD)/Induced Draft (ID)/ Primary Air (PA) Fan Servo Motor Assembly	50
87	Tubes (Carbon Steel)	50
88	Steam pipes (Carbon Steel)	50
89	Steam drum	50
90	Separator	50
91	Selective Catalytic Reduction (SCR)	50

Sl. No.	Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition	Class-I Local Supplier (Minimum Local Content (%))
	Electro-Static Precipitators (ESPs)	
92	Casing	60
93	Electrodes	60
94	Rapping System	60
95	Hopper Heaters	60
96	Transformer Rectifiers	60
97	Insulators	60
	Turbine & Auxiliaries	
98	Turbine (High Pressure/Intermediate Pressure/Low Pressure)	50
99	Condensate Extraction Pumps	60
100	Condenser On line Tube Cleaning System (COLTC)	60
101	Debris filters	60
102	Deaerator	60
103	Drain Cooler and Flash Tank	60
104	ECW Pump	50
105	Plate Heat Exchanger	50
106	Self- cleaning filters	50
107	Condensate Polishing Units (CPUs)	60
108	Chemical Dosing System	60
109	Oil Filter	60
110	Gland Steam Condenser	60
111	Oil Purifying Centrifuge	50
112	Water Cooled Condenser	50
113	Boiler Feed Pumps (BFPs)	50
	Generator and Auxilleries	
114	Generator (including Seal Oil System, Hydrogen Cooling System, Stator water cooling system)	60
	Electrical Works	
115	Control and metering equipment	60
	Control & Instrumentation System (C&I System)	
116	Thermocouples	50
117	Measuring instruments [Resistance Temperature Detectors (RTDs)], Local gauges	50
118	Actuators (Pneumatic and conventional electric)	50
119	Interplant Communication/ Public Address (PA) system except IP based	50
	Coal Handling Plant	
120	Conveyors	60
121	Wagon Tippler	60
122	Side Arm Charger	60
123	Paddle feeder	60
124	Crushers & Screens	60
125	Dust suppression (dry fog & plain water) system	60
126	Air Compressors	50
127	Magnetic separators & metal detectors	60
128	Coal Sampling System	60
129	Stacker cum reclaimer	60
130	Belt weighing & monitoring system.	60
131	Wheel & axle assembly (without bearings) for Bottom Opening Bottom Release (BOBR) Wagons	60
	Ash Handling System	
132	Clinker grinder	60
133	Water jet ejectors	60
134	Scraper chain conveyor	60
135	Dry fly ash vacuum extraction system	60
136	Pressure pneumatic conveying system	60

Sl. No.	Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition	Class-I Local Supplier (Minimum Local Content (%))
137	Ash water & ash slurry pumps	60
138	Compressors, air dryers & air receivers	50
139	Ash water recovery system	60
	Raw Water Intake & Supply System	
140	Travelling water screens	60
141	Raw water supply pumps	60
142	Valves, RE joints etc.	60
	Water Treatment System and Effluent Treatment System	
143	Clarification plant	60
144	Filtration plant	60
145	Ultra filtration plant	50
146	Reverse Osmosis (RO) plant and its membrane	55
147	De-Mineralised water plant (DM Plant)	60
148	Chlorination plant	60
149	Chemical dosing system	60
150	Effluent Treatment Plant	60
	Circulating Water (CW) & Auxiliary Circulating Water (ACW) System	
151	CW & ACW Pumps	60
152	Butter Fly (BF) valves, Non-return Valves (NRVs) etc.	60
153	Rubber Expansion (RE) joints	60
154	Air release valves	60
	Cooling Towers (NDCT/ IDCT)-Natural-Draft and Induced Draft Cooling Tower	
155	Water Distribution System	60
156	Spray nozzles	60
157	Packing	60
158	Drift eliminators	60
159	Cooling Tower (CT) Fans (for Induced Draft Cooling Towers IDCT)	60
160	Gear boxes, shafts & motors (for IDCT)	60
	Air Conditioning & Ventilation System	
161	Split & window air conditioners	60
162	Chilling/ condensing unit [upto 500 ton of refrigeration(TR)]	55
163	Air Handling Unit (AHU) and Fresh air unit	60
164	Cooling Towers	60
165	Air Washing Units (AWUs), axial fans, roof extractors	60
166	Ducts, louvers & dampers	60
	Flue Gas Desulphurization (FGD)	
167	Spray Nozzles,	50
168	Spray header	50
169	Oxidation Blowers	50
170	Limestone wet Ball Mill	50
171	Slurry Handling Pumps for FGD system	50
172	Booster Fans for FGD system	50
173	Carbon Steel Ducts and Dampers for FGD	60
174	Storage Tanks and Silos	60
175	Process Water Pump for FGD system	50
	(D) Other Common Items	
	Fire protection and detection system	
176	Motor driven fire water pumps	60
177	Diesel engine driven fire water pumps	60
178	Hydrant system for the power plant.	60
179	High velocity water spray system	60
180	Medium velocity water spray system	60
181	Foam protection system	60
182	Inert gas flooding system	60

Sl. No.	Electrical Equipment for Generation, Transmission and Distribution sectors with sufficient local capacity and competition	Class-I Local Supplier (Minimum Local Content (%))
183	Fire tenders	60
184	Portable fire-extinguishers	60
185	Cranes, EOT cranes, gantry crane & chain pulley blocks etc.	60
186	Elevator	60

(E) Minimum Local Content percentages in Engineering, Procurement & Construction (EPC) / Turnkey project

In case the contract is awarded through the EPC route, the contractor should comply with the requirement of MLC for individual items as listed in Annexure-I and should purchase these items only from Class-I Local supplier. In addition, MLC for complete EPC project may also be prescribed as below:

	(1) Package Based Works	Minimum Local Content (%)
1	Boiler	60
2	TG System (Water Cooled Condenser)	60
3	Ash Handling Plant	60
4	Coal Handling Plant	60
5	Electro-static Precipitator (ESP)	60
6	Circulating Water (CW) System	60
7	Cooling Tower	60
8	Water Treatment System	60
9	Air Conditioning System (below 500TR)	60
10	Flue Gas Desulphurisation (FGD) System	60
11	Station Control & Instrumentation (C&I)	50
12	Hydro Power Projects (Electro-Mechanical Works)	60
	Gas based generation	
	Overall Gas Turbine Package (on finished Product basis)	
13	< 44 MW	60
14	44 – 145 MW	50
	Overall Combined Cycle Gas Turbine (CCGT) Package (on finished Product basis)	
15	< 44 MW	60
16	44 – 145 MW	60
17	> 150 MW	60
	(2) Project as a whole	
1	Works and service contracts in Power Sector	60
2	Transmission Line with Conventional conductors (ACSR, AAAC, AL-59 etc.)	60
3	Transmission Line with High temperature Low Sag (HTLS) conductors	60
4	HVAC Substation Air Insulated (AIS)	60
5	HVAC Substation Gas Insulated (GIS)	60
6	HVDC Substation	60
7	Distribution Sector	60

General guidelines to be adopted selectively in an appropriate manner by the procuring entities in their tender documents.

1. The bidder shall have to be an entity registered in India in accordance with law.
2. The bids shall be in the language as prescribed by the tenderer/procurer.
3. The bids shall be in Indian Rupees (INR) (in respect of local content only).
4. Indian subsidiaries of foreign bidders shall have to meet the qualifying criteria in terms of capability, competency, financial position, past performance etc.
5. The bidder shall follow Indian laws, regulations and standards.
6. To be eligible for participation in the bid, foreign bidders shall compulsorily set up their manufacturing units on a long term basis in India as may be specified by the tenderer/ procurer.
7. Similar or better technology than the technology offered in respect of material, equipment and process involved shall be transferred to India. Along with the transfer of technology, adequate training in the respective field shall also be provided.
8. Country of origin of the equipment/material shall be provided in the bid.
9. For supply of equipment / material from the country of origin other than India, the bidder shall submit performance certificate in support of satisfactory operation in India or a country other than the country of origin having climatic and operational conditions including ambient temperature similar to that of India for more than _____ years (to be specified by the procurer).
10. The technologies/ products offered shall be environmental friendly, consuming less energy, safe, energy efficient, durable and long lasting under the prescribed operational conditions.
11. The supplier shall ensure supply of spares, materials and technological support for the entire life of the project.
12. The manufacturers/ supplier shall list out the products and components producing Toxic E-waste and other waste as may be specified. It shall have an Extended Producers Responsibility (EPR) so that after the completion of the lifecycle, the materials are safely recycled / disposed of by the Manufacturer/ supplier and for this, the Manufacturer/supplier along with procurer has to establish recycling / disposal unit or as may be specified.
13. Minimum Local Content requirement for goods, services or works shall be in accordance with the conditions laid down in respective Order(s) of the sectors on Public Procurement (Preference to Make in India) to provide for purchase preference (linked with local content).

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14. The equipment/ material sourced from foreign companies may be tested in accredited labs in India before acceptance wherever such facilities are available.
 15. The Tender fee and the Bank Guarantee (BG) shall be in Indian Rupees only.
 16. The bidder shall have to furnish a certificate regarding cyber security/safety of the equipment/process to be supplied/services to be rendered as safe to connect.
 17. Applicable safety requirements shall be met. Regular safety audit shall be carried out by the manufacturer/ supplier.
 18. Statutory laws/regulations including the labour and environmental laws shall be strictly complied with during supply, storage, erection, commissioning and operation process. A regular compliance report shall be submitted to the procurer/appropriate Authorities.
 19. Formation of new joint venture in India shall be permitted only with the Indian companies.
 20. Tendering by the agent shall not be accepted.
 21. In case local testing is not considered necessary by the procurer, the original test report in the language prescribed by the procurer may be accepted. The translated test report shall not be accepted unless it is notarised.
 22. Certification/compliance as per the Indian Standards/ International Standards/ Indian Regulations/ specified Standards shall be mandatory, where ever applicable.
 23. Quality assurance of the product shall be carried out by the procurer or an independent third party agency appointed by the procurer. Manufacturing Quality Plan as approved by the procurer shall be followed by the manufacturer/supplier.
 24. Wherever required by the procurer, foreign supplier shall establish fully functional service centers in India and shall keep spares/material locally for future needs of utilities.
 25. Arbitration proceedings shall be instituted in India only and all disputes shall be settled as per applicable Indian Laws.

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

OFFICE OF DEVELOPMENT COMMISSIONER (MSME)

New Delhi, The 23rd March, 2012

ORDER

Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012

Whereas, the Central Government Ministries, Departments and Public Sector Undertakings shall procure minimum of 20 per cent of their annual value of goods or services from Micro and Small Enterprises; And whereas, the Public Procurement Policy shall apply to Micro and Small Enterprises registered with District Industries Centers or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises;

And whereas, the Public Procurement Policy rests upon core principles of competitiveness, adhering to sound procurement practices and execution of orders for supply of goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost effective; and

And whereas, for facilitating promotion and development of micro and small enterprises, the Central Government or the State Government, as the case may be, by Order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or Departments, as the case may be, or its aided institutions and public sector enterprises.

Now, therefore, in exercise of the powers conferred in section 11 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006, the Central Government, by Order, notifies the Public Procurement Policy (hereinafter referred to as the Policy) in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries, Departments and Public Sector Undertakings.

2. Short title and commencement. -

- (1) This Order is titled as 'Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012'.
- (2) It shall come into force with effect from 1st April 2012.

3. Mandatory procurement from Micro Small and Enterprises. -

(1) Every Central Ministry or Department or Public Sector Undertaking shall set an annual goal of procurement from Micro and Small Enterprises from the financial year 2012-13 and onwards, with the objective of achieving an overall procurement of minimum of 20 per cent, of total annual purchases of products produced and services rendered by Micro and Small Enterprises in a period of three years.

(2) Annual goal of procurement also include sub-contracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by National Small Industries Corporation.

(3) After a period of three years i.e. from 1st April 2015, overall procurement goal of minimum of 20 per cent shall be made mandatory.

(4) The Central Ministries, Departments and Public Sector Undertakings which fail to meet the annual goal shall substantiate with reasons to the Review Committee headed by Secretary (Micro, Small and Medium Enterprises), constituted in Ministry of Micro, Small and Medium Enterprises, under this Policy.

4. Special provisions for Micro and Small Enterprises owned by Scheduled Castes or Scheduled Tribes.

% Out of 20 per cent target of annual procurement from Micro and Small Enterprises, a sub-target of 20 per cent (i.e., 4 per cent out of 20 per cent) shall be earmarked for procurement from Micro and Small Enterprises owned by the Scheduled Caste or the Scheduled Tribe entrepreneurs. Provided that, in event of failure of such Micro and Small Enterprises to participate in tender process or meet tender requirements and L1 price, 4 per cent sub-target for procurement earmarked for Micro and Small Enterprises owned by Scheduled Caste or Scheduled Tribe entrepreneurs shall be met from other Micro and Small Enterprises.

5. Reporting of targets in Annual Report. %

(1) The data on Government procurements from Micro and Small Enterprises is vital for strengthening the Policy and for this purpose, every Central Ministry or Department or Public Sector Undertaking shall

report goals set with respect to procurement to be met from Micro and Small Enterprises and achievement made thereto in their respective Annual Reports.

- (2) The annual reporting shall facilitate in better understanding of support being provided by different Ministries or Departments or Public Sector Undertakings to Micro and Small Enterprises.

6. Price quotation in tenders. % (1) In tender, participating Micro and Small Enterprises quoting price within price band of L1+15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 20 per cent of total tendered value.

- (2) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity).

7. Developing Micro and Small Enterprise vendors. – The Central Ministries or Departments or Public Sector Undertakings shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes or Buyer-Seller Meets and entering into Rate Contract with Micro and Small Enterprises for a specified period in respect of periodic requirements.

8. Annual Plan for Procurement from Micro and Small Enterprises on websites. – The Ministries or Departments or Public Sector Undertakings shall also prepare Annual Procurement Plan for purchases and upload the same on their official website so that Micro and Small Enterprises may get advance information about requirement of procurement agencies.

9. Enhancing participations of Micro and Small Enterprises including those owned by Scheduled Castes or Scheduled Tribes in Government procurements. % For enhancing participation of Scheduled Castes or Scheduled Tribes in Government procurement, the Central Government Ministries, Departments and Public Sector Undertakings shall take following steps, namely:-

- (a) Special Vendor Development Programmes or Buyer-Seller Meets shall be conducted by Departments/Public Sector Undertakings for Scheduled Castes or Scheduled Tribes;
- (b) Outreach programmes shall be conducted by National Small Industries Corporation to cover more and more Micro and Small Enterprises from

Scheduled Castes or Scheduled Tribes under its schemes of consortia formation; and

- (c) National Small Industries Corporation shall open a special window for Scheduled Castes or Scheduled Tribes under its Single Point Registration Scheme (SPRS).

10. Reduction in transaction cost. % To reduce transaction cost of doing business, Micro and Small Enterprises shall be facilitated by providing them tender sets free of cost, exempting Micro and Small Enterprises from payment of earnest money, adopting e-procurement to bring in transparency in tendering process and setting up a Grievance Cell in the Ministry of Micro, Small and Medium Enterprises.

11. Reservation of specific items for procurement. % To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure 358 items (Appendix) from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. This will help in promotion and growth of Micro and Small Enterprises, including Khadi and village industries, which play a critical role in fostering inclusive growth in the country.

12. Review Committee. – (1) A Review Committee has been constituted under the Chairmanship of Secretary, Ministry of Micro, Small and Medium Enterprises, for monitoring and review of Public Procurement Policy for Micro and Small Enterprises vide Order No. 21(1)/2007-MA dated the 21st June 2010 (Annexure).

- (2) This Committee shall, inter alia, review list of 358 items reserved for exclusive purchase from Micro and Small Enterprises on a continuous basis, consider requests of the Central Ministries or Departments or Public Sector Undertakings for exemption from 20 per cent target on a case to case basis and monitor achievements under the Policy.

13. Setting up of Grievance Cell. % In addition, a 'Grievance Cell' will be set up in Ministry of Micro, Small and Medium Enterprises for redressing grievances of Micro and Small Enterprises in Government procurement. This cell shall take up issues related to Government procurement raised by Micro and Small Enterprises with Departments or agencies concerned, including imposition of unreasonable conditions in tenders floated by Government Departments or agencies that put Micro and Small Enterprises at a disadvantage.

14. Special Provisions for Defence Procurements. %
Given their unique nature, defence armament imports shall not be included in computing 20 per cent

goal for Ministry of Defence. In addition, defence equipments like weapon systems, missiles, etc. shall remain out of purview of such Policy of reservation.

15. Monitoring of Goals. % The monitoring of goals set under the Policy shall be done, in so far as they relate to the Defence sector, by Ministry of Defence itself in accordance with suitable procedures to be established by them.

16. Removal of difficulty. % Any difficulties experienced during the course of implementation of the above Policy shall be clarified by Ministry of Micro, Small and Medium Enterprises through suitable Press releases which would be kept on the public domain.

(AMARENDRA SINHA)

**Additional Secretary and Development
Commissioner (MSME)**

Annexure

**No. 21(1)/2007-MA
Government of India**

**Ministry of Micro, Small and Medium Enterprises
Office of the Development Commissioner (MSME)**

ORDER

'A' Wing, 7th Floor, Nirman Bhavan,
New Delhi-110108 Dated: 21st June, 2010

**Subject: Constitution of a Committee for monitoring
and review of the Public Procurement Policy for Micro
and Small Enterprises**

Pending approval of the new Public Procurement Policy for Micro and Small Enterprises (MSEs), a Committee is hereby constituted for looking into the applicability of some of the provisions of the proposed Policy in respect of select Central Ministries/Departments.. The Committee will be chaired by the Secretary, Ministry of Micro, Small and Medium Enterprises.

2. The composition of the Committee will be as follows:

- (i) Secretary, : Chairman Ministry of MSME
- (ii) Secretary, : Member Planning Commission
- (iv) Secretary, : Member Department of Public Enterprises
- (v) Director General (Supplies and Disposals), : Member Department of Commerce,

(vii) Ministry of Commerce and Industry

(viii) Additional Secretary and : Member Secretary
Development Commissioner (MSME)

3. The Committee will undertake the following functions:

- (i) Consider the requests of the Central Ministries/Departments/PSUs for exemption, on a case to case basis, from the 20% target;
- (ii) Review the list of 358 items (as per Appendix) reserved for exclusive purchase from the MSEs based on the feedback received from the Central Ministries/Departments/PSUs ;
- (iii) Review the grievances received from MSEs regarding Government procurement, including imposition of unreasonable conditions in the tenders floated by the Government Departments/PSUs; and

(iv) Suggest special measures to be taken by the Central Ministries/Departments for enhancing their procurements from MSEs.

4. The Committee may co-opt any other Ministries/Departments of the Central Government as well as State Governments or invite any other expert/person associated/concerned with the MSMEs in its meetings, as and when required.

5. The Office of the Development Commissioner (MSME) will provide secretariat support to this Committee.

6. This issues with the approval of the Competent Authority.

Sd/-

(Praveen Mahto) Additional Economic Adviser Ph:
23062230, Fax: 23061611

To,

All Members of the Committee

Copy to:

- 1. Cabinet Secretariat (Shri V.P.Arora, Under Secretary), w.r.t. their O.M.No. 601/2/1/2009-Cab.III dated 24.02.2010
- 2. PS to Minister (MSME)
- 3. Sr. PPS to Secretary (MSME)

Appendix

**LIST OF ITEMS RESERVED FOR PURCHASE FROM SMALL
SCALE INDUSTRIAL UNITS INCLUDING HANDICRAFT
SECTOR. Please see website : eprocure.gov.in**

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PUBLIC PROCUREMENT - A POTENT TOOL TO MAKE IN INDIA

KAMESHWAR CHOUDHARY, IRSS(R)
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Make In India has been the flagship programme of Government of India since Oct 2014 to promote development of local industries with the objectives for growth of per capital income and employment of Indian Citizens. The programme has a multi-sectoral outlook with the support of FDI policy, launch of Start Ups eco system, Fund of funds, Productivity Linked Schemes (PLI schemes) and Quality Control Order (QCOs) in different industry segments. Manufacturing competitiveness, Project Monitoring and Ease of Doing Business (EODB) have been given special emphasis. The Public Procurement (Preference to Make in India) Order, 2017 has been the fulcrum of participation of Industrial Units dedicated to the cause of promoting supply chain for Union Govt and CPSEs under GOI.

Public Procurement (Preference to Make in India) Order, 2017 popularly referred to as **PPP.MII Order, 2017** initiated on 15.06.2017 has evolved during last 3 years. Since 4th June 2020, Bidders in procurement process have been classified in three categories (class-1, Class-2 and Non local suppliers based on local contents of 50% and above, between 20% to 50% and below 20% respectively) to be eligible to participate in Public Bidding. Minimum Local Contents are subject to declaration by Bidders (up to Rs 10 Cr) and also supported by Certificates of Statutory Auditors such as Chartered/Cost Accountants for Tenders above Rs 10 crores. Bidders in the category of Class-1 local suppliers are eligible for purchase preference even if their offered rate is higher (within the margin of 20%) than the lowest rate offered by foreign bidders/non local suppliers. The local suppliers, however, do not get any price preference, as they have to match price with the lowest bid of non local supplier. Thus the PPP.MII Order does not have any adverse effect on cost of procurement. As the local bidders have to meet specifications of the product and the requirement of Delivery, there is no adverse effect in procurement.

The Local suppliers for the sake of this Order include the India based Foreign Companies holding foreign (MNC) Brands, engaged in local production and generation of employment in India. Various schemes of GOI for incentivizing local industries such as PLI etc, are available to such entities also. The local suppliers also include MSMEs (registered with Ministry Of MSME), Start Ups (registered with DPIIT) and CPSEs under the administrative control Ministries of GOI.

Make In India has been a trend setter for localization of products and sourcing from local industries. Though State Govt (except, Arunachal, Manipur, Nagaland and HP) have not adapted the PPP.MII Order framed by GOI in spite of repeated requests, Departments under Union Of India and CPSEs have been fully sensitized. The Bidding Documents of all Departments and E procurement modules including GeM have been aligned with PPP.MII Order, 2017 to promote development of supply base for domestic consumption in public sectors.

20 Nodal Ministries declared for different products under PPP.MII Order have been trying to assess the capacity of Indian Industries to participate in a competitive environment. Such products listed by nodal Ministries can be sourced only from Indian industries. Majority Ministries/department like Railways, MohuA, Deptt of Pharmaceuticals (for Medical Devices) and DOT etc have declared their list of products reserved for procurement from local sources. In a separate order of DoE (Ministry of Finance), the issue of Global Tenders below Rs 200 crore have been prohibited except with the approval of Cabinet secretary (co-ordination), GOI. The Fin Min (DOE) has further restricted entry of participants from Land Border Sharing Countries (LBSCs) in public procurement except with prior registration with GOI. This has effect of eliminating anti-dumping attitudes and aggressive bidding with predatory prices.

Indian Industries have been facing numerous challenges in addressing their problems. There is hardly any independent institutional mechanism for redressal of grievances of Bidders in any Department of GOI. In absence of such forum, the grievances are being addressed by procurement Organizations themselves, who are obsessed with their own prejudices. The Standing Committee constituted under the chairmanship of Secretary (DPIIT) with Members from Deptt of Commerce, Expenditure, MeitY, DPIIT and concerned Procurement Department has provided an open forum to raise grievances of Bidders against the Procurement Entities who have been incorporating restrictive and discriminatory eligibility conditions for participation in Public Bidding. This forum has resolved large number of grievances of local industries thereby protecting Make in India products from onslaught of foreign bidders. During 3 years commencing June 2017, about 1500 NITs were examined with reference to grievances and Tenders worth Rs 40,000 cr were either cancelled or modified by various Govt Agencies due to non compliance to Make in India Order.

During my association with DPIIT, I witnessed that aspirations of Indian Industries hovered round different types of entry barriers, whether technical or financial resulting in non participation of local suppliers even when they were capable to compete with foreign bidders. Such conditions included stipulations of USFDA/CE certifications for Medical Devices, stringent conditions of 25 years experience and Rs 500 cr Turn-over for Elevators and requirement of Foreign Brands in NITs of Govt Tenders. Opening the door of Grievances at DPIIT facilitated local Bidders to be heard at an independent forum in Govt. The resolution of their grievances by DPIIT was thrilling and full of momentous glee as many Indian Bidders became confident of getting Govt help in genuine cases in a neutral manner. Sometimes, their aspirations were sparking to get support on merit. Thus Make in India policy has sensitized Govt organisations across sectors of economy and has proved to be a potent tool for protection of local industries in public procurement.

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LEVY OF LIQUIDATED DAMAGES : IMPACT OF WELSPUN CASE JUDGEMENT

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PSU Vs Welspun: Recently there was a news item in the "Business Line" dt 13/12/2021 regarding a Supreme Court judgement about a dispute between a PSU and Welspun specialty solutions related to recovery of Liquidated damages (L/D).

Brief of the case is as follows:

In 1995, the PSU placed 4 separate orders on REMI metals (which later became Welspun specialty solutions) for supply of 3,93,297 M of seamless pipes. Delivery to commence within 16 weeks and to be completed in 40 weeks of PO. As per the order, time and date of delivery "shall be the essence of the contract". There was also provision for recovery of L/D for delayed supplies.

There were delays in supplies and the PSU kept on extending the delivery date while recovering L/D. First two extensions were granted without levy of L/D. Welspun disputed the recovery of L/D and matter went to Arbitration. The Arbitration Tribunal ruled in favour of the supplier, observing that merely having a clause that "Time is the essence" would not be determinative and overall view on all the terms of the contract should be taken. While the PSU levied L/D of \$ 8,07,804 plus Rs 1.05 lks, the Arbitration Tribunal allowed L/D to the extent of **actual loss** estimated to be Rs 2.09 crs only.

Matter went to Supreme court. A division bench presided by the Chief Justice observed that, whether time is the essence of a contract has to be culled out by reading the entire contract and surrounding circumstances. PSU initially waived levy of L/D and the **same could not be reimposed unless such reimposition was accepted by the parties as there was no clear provision for REIMPOSITION of L/D. Further having provision for extension of delivery period with L/D shows that time was not the essence.**

L/D was waived initially. Further the language for reimposition of L/D was not precise. PSU adopted its std Form of contract and is assumed to have larger bargaining power. Since time was not the essence of the contract, L/D as per contract conditions was not granted and L/D limited to actual loss was only allowed.

PSU's arguments that as per section 34 of Arbitration and Conciliation Act 1996, the award of the tribunal can be set aside if it is against public policy was not accepted as the court observed that the "public policy" does not indicate "catch-all provision" to challenge an Arbitral award before an appellate forum on infinite grounds. Thus PSU's L/D claim amount was drastically

reduced as above.

It is relevant to mention here that while dealing with another dispute between Kailash Nath Associates vs DDA, (2015) Supreme court has opined that where it is possible to prove the actual damages or loss, such a proof is not dispensed with. Only in cases where damages or loss is difficult or impossible to prove that L/D amount named in the contract, if it is genuine pre-estimate of loss or damage, can be awarded. Interestingly, in the SAW pipe case the Supreme court observed that in "every case of breach the person aggrieved by the breach is not required to prove the actual loss or damage suffered by him" (para 68(3) of the proceedings).

PSU Vs SAW pipe case (2003) : This is an old case and also relates to recovery of L/D for delay in supplies. In this case Supreme court held that it is not necessary to prove loss under S 73 & 74 of Contract Act when genuine pre-estimated loss is stipulated in the contract. The court inter alia also held that in certain cases, it is impossible to assess the damage or prove the same. It further held that the phrase "Public Policy of India" used in S 34 of Arbitration and Conciliation Act 1996 had to be given wider meaning and an arbitral award could be set aside by the courts if it is contrary to fundamental policy of Indian law, interest of India, justice or morality or is patently illegal. Interestingly, in the SAW pipes case also there was long delay and L/D amounting to 10% of order value (@1 % per week of delay) was levied. However the court did not observe that "time is of essence" was lost or diluted. **While dealing with the Welspun case, the court noted that the SAW pipe case has been distinguished from the subject case. In SAW pipe case, at the time of granting extension it was clearly mentioned that L/D would be levied. ie) no waiver of L/D was granted at any time.**

Impact of Welspun case judgement:

While dealing with a dispute between MBL Infrastructure Ltd and Icron International Ltd, Calcutta High court observed that the **Judgement of a division bench can not be overruled by another division bench of similar strength.** Further, the Supreme court has referred to SAW pipe case while dealing with Welspun case as well as Kailash Nath Associates case. In both cases the **court has not negated the SAW pipe case judgement. Hence we can safely assume that the supreme court judgement in SAW pipes case holds good.**

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PUBLIC PROCUREMENT – A PSU APPROACH

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Public money ought to be touched with the most scrupulous conscientiousness of honour. It is not the produce of riches only, but of the hard earnings of labour and poverty. It is drawn even from the bitterness of want and misery. Not a beggar passes, or perishes in the streets, whose mite is not in that mass.

- Thomas Paine (18th century American Political Activist)

Public procurement refers to the purchase of goods, services and works by the state using public money.

The public procurement process begins with assessment of needs by the user. Though award of contract is the heart of the process, it only completes with final payment made after satisfactory supply of goods, services or works. Various Post Contractual activities like performance evaluation and litigation also form a part of the extended public procurement process.

Public procurement in India is estimated to be 30% of GDP each year. Due to the size of the financial flows involved, the State is expected to carry out the process efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest. Unfortunately, due to the same reason, Public procurement is also the most vulnerable to inefficiency, fraud and corruption, requiring implementation of clear rules, guidelines and strict oversight. A Purchase officer dealing with Public procurement is not only answerable to the Government agencies, but also to every citizen of this country.

Public procurement in India is governed by the General Financial Rules and the Manuals for Procurement of 'Goods', 'Consultancy and other Services' and 'Works' issued by Department of Expenditure, Ministry of Finance. These Manuals are revised from time to time keeping in view the best practises and latest developments in Public procurement worldwide.

Basic Aims of Procurement – the Five R's of Procurement:

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

- i. Right Quality
- ii. Right Quantity

- iii. Right Price
- iv. Right Time and Place
- v. Right Source

L-1 or 'Value for Money' Procurement: 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 utility/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 nontoxic etc.) and/or life cycle costs, as appropriate. Price alone may not necessarily represent VfM. In public procurement, VfM is achieved by attracting the widest competition by way of optimal description of need; development of value-engineered specifications/Terms of Reference (ToR); appropriate packaging/slicing of requirement; selection of an appropriate mode of procurement and bidding system.

General instructions on Procurement and Project Management : The Dept of Expenditure, Procurement policy division, Ministry of Finance, GoI has recently issued general instructions on procurement and project management vide OM dated 29.10.2021 (within the meaning of Rule 6(1) of GFR) after elaborate consultations with various stakeholders like CVC, CAG, Niti aayog and reform workshops. These guidelines prepared in consultation with CVC provides a sound platform for initiating reforms for empowering executing agencies and officers to take effective decisions in public interest.

Apart from various suggestions which will empower decision makers to take business decisions, these guidelines also allow for QCBS type evaluation in procurement of Non Consultancy services upto a value of Rs. Ten crores in each case.

COAL INDIA LIMITED: Article 12 of the Constitution of India, defines the term 'State' to denote the union and state governments, the Parliament and state legislatures, and all local or other authorities within the

territory of India or under the control of the Indian government. This brings Public Sector Enterprises also under the definition of State as Government of India is the major shareholder. Therefore, any procurement made by these PSEs is also considered Public procurement.

These organizations, keeping in view their commercial nature of operation, often issue their own Procurement Manuals derived from the guidelines issued by Government of India, and personalized to better suit their situation. Coal India Limited is one such organization, identified as a Maharatna PSU and falling under the administrative oversight of Ministry of Coal.

CIL has been founded on 01.11.1975 by nationalizing coal mines with a vision to emerge as a global player in the primary energy sector committed to provide energy security to the country by attaining environmentally & socially sustainable growth through best practices from mine to market. Coal India is the single largest coal producing company, not only in India, but across the world.

CIL is committed to playing a major role in achieving the Nation's energy security. CIL has envisioned 1 Billion Tonne (Bt) production in the year 2024-25 to meet the coal demand of the country. And to achieve this target, CIL needs to induct latest mining technology, which means procurement of goods, works and services.

CIL has separate Manuals and separate departments handling Procurement of Goods, Works and Services. These Manuals have been inspired from the Manuals for Procurement of 'Goods', 'Consultancy and other Services' and 'Works' issued by Department of Expenditure and also incorporate certain guidelines and systemic improvement measures suggested by CVC.

CIL like other PSUs is also subject to CVC oversight and CAG Audits. The Chief Vigilance Officer appointed by CVC is the head of the Vigilance department which not only questions suspicious decisions, but also helps the organization in preventive Vigilance measures by suggesting countermeasures to the loopholes present in the existing procedures.

Annually, CIL spends about Rs. 1,00,000 Crores on procurement of goods, services and works. Major expenditure is on works contracts for OB removal, while the major expenditure in goods is for procurement of Heavy Earth Moving Machinery.

EASE OF DOING BUSINESS A CIL PERSPECTIVE:

CIL has also made full efforts to adopt the regulatory reforms of GoI aimed at making it easier to do business in India. The program represents a great deal of effort to create a more business-friendly environment.

To enhance Ease of Doing Business, Coal India Ltd and its subsidiaries have held "Vendor Meets" with the sole aim of imbuing the inputs to create ease of doing business.

Coal India Limited is seeking Bid Securing Declaration instead of Earnest Money against tenders floated till 31.12.2021 as per government directives. Prior to the above directive, the maximum cap of EMD was reduced from Rs. 1.00 Crore to Rs. 50.00 lakhs. This would now be applicable for tenders after 31.12.2021. Submission of EMD has been made online and the EMD of unsuccessful bidders is auto-refunded. In case of Security Deposit, the amount being sought for existing contracts and for tenders to be floated till 31.12.2021 has been reduced from 10% of contract value to 3% of contract value in line with government directives. CIL confirms Bank Guarantees through Structured Financial Messaging System (SFMS) ensuring timely verification. In order to further the vision of Government of India for Micro Small & Medium Enterprises, CIL has exempted MSEs and Startups from criteria of prior experience and turnover for participation in tenders.

Further, the MSEs and Startups are also exempt from submitting Earnest Money against tenders, even after 31.12.2021. Various tender eligibility parameters have also been relaxed in case of works and services contracts to reduce entry barriers. Further, in case of BIS / DGMS approved items, no separate eligibility criteria are being sought. Considering the strides achieved by GeM in creating a transparent and competitive e-Marketplace, CIL has made procurement through GeM mandatory for all items available on GeM portal.

Also various recent instructions on allowing QCBS type evaluation in procurement of Non Consultancy services upto a value of Rs. Ten crores in each case has also been made part of CIL guidelines.

Public Procurement activities at CIL are being pursued in a fair, transparent and decisive manner with full emphasis on Value for money and Ease of doing Business. Various proactive changes have been undertaken to meet the challenges of ongoing eco system.

Way Forward- Future Strategies

In its continued Quest for Excellence, CIL is further looking forward to and taking steps for incorporating following in future procurement processes:

- 1) Mandatory e-procurement- as "End to End" solution
- 2) Upgrading e-Procurement system- to comply to latest Government guidelines
- 3) Updating of Manuals
- 4) Standard Bidding Documents
- 5) Internal Capacity Building- Refresher courses for personnel- Recognising procurement as a specialised function.
- 6) Post Award Contract Management through increased use of Digital Tools
- 7) Identification of Key Performance Indicators and Monitoring progress in on line platform.

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THE FUTURE OF PUBLIC PROCUREMENT IN THE ERA OF DIGITALIZATION

Why digitize public procurement?

Many countries have an opportunity to digitally transform public procurement systems to achieve enhanced efficiency, accountability, transparency, and participation of small and medium enterprises (SMEs). Digitally transforming public procurement would also accelerate national development objectives, such as enhancing public service delivery, developing human capital and the private sector, and gender empowerment.

For example, the digitalization of public procurement may yield benefits and savings due to streamlining administrative processes and increasing competition, up to 20 percent in cost and 80 percent in time. Digitalization may reduce barriers for participation of SMEs (including those owned by women and disadvantaged groups) in public contracting, supporting their development and job growth. Use of Mexico's e-procurement system helped increase SMEs' winning of public contracts by 19.2 percent relative to the annual goal in 2017.

However, we see a digital gap between countries around the world, particularly in public procurement. While some countries lack even a portal to post information about government contracts, other countries, such as those in the OECD, are employing artificial intelligence and blockchain. For countries that use these new technologies, their public procurement processes become more efficient and they have more business opportunities. This growing gap stresses the fact that other countries have a lot of catching up to do.

So how do countries address the technological and digital gap?

The World Bank Group organized a conference co-hosted by the Government of Tunisia called the "Future of Public Procurement in the Era of Digitalization" on June 18-20, 2018 in Tunis, Tunisia.

Serving as a knowledge exchange between countries with advanced procurement systems (Scotland, Chile, Brazil, Mexico, the United States,

and Portugal/European Commission) with participants from Middle East and North Africa, and Sub-Saharan African countries, the conference highlighted key lessons for countries around the world on addressing the digital gap in their procurement systems:

- **Implementation may be gradual:** It is possible to start small in digitalizing public procurement in a way that is not as expensive and grow from there—but this is only possible if governments plan.
- **Leadership and political will are critical:** Strong political will from top leadership is needed to establish and mainstream a digital procurement system. It is important to take advantage of the windows of opportunity for such support. However, without these opportunities, civil servants can also take initiative to explain the technical elements of e-procurement and the real benefits to the government, whether it be improved investment climate, fiscal benefits, or economic growth, and form a coalition for change.
- **Leapfrogging is possible, but only after the basics are in place:** There are opportunities for countries, particularly those in initial stages of digital development, to "leapfrog" through learning from the lessons of other countries' e-procurement experiences and take advantage of the latest technology that exists. However, basic building blocks have to be in place first, including legal, institutional, capacity building, and related arrangements.
- **E-procurement is a key tool to combat corruption, and recognition of corruption is essential:** The digital transformation of public procurement can help curb corruption by increasing transparency and accountability of public procurement processes and empowering civil society monitoring and effective feedback loops like ChileCompra's reporting platform.

Source: www.indiaprocurement.in

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SUPPLIER'S SCORECARD

A TOOL FOR ASSESSING SUPPLIER'S PERFORMANCE & RISK THAT HAS A DIRECT IMPACT ON YOUR BUSINESS

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Abstract: Suppliers' Performance has a direct impact on your business. Poor performance can create damages, and selecting the wrong supplier can result in not only monetary loss, but also greater damage to the Organization in many ways and its Reputation and Future Business. That justifies why Businesses should evaluate and score the suppliers Performance & its associated Risk to align the Suppliers Performance with Organizational Business Goals.

Key words: Supplier's Performance, Supplier's Performance & Risk assessment, Supplier Risks, Supplier Scorecard

Introduction : Suppliers' Performance has a Direct Impact on your Business. The Reliability of Supplier Delivery & Quality is being one of the Important Factors of Input, Directly Impacting the Output Deliverables, Customer Satisfaction & Loyalty; Sales & Profits; Market Value & Brand Reputation. The supplier's internal Policies, Procedures, Systems and Practices (e.g., Production Planning, Inventory Policy, all impact supply-chain performance) also impact the Manufacturers Business.

Therefore, Assessing Suppliers Performance and Risks are Essential for better managing the Businesses. Automobile Recalls may be considered as a finer example of how a number of corporate brands have been tarnished by the actions of their suppliers. In this article we shall discuss Suppliers Scorecard : A Supply Performance & Risk Assessment Tool to understand the importance of the Suppliers assessment.

Need for Supplier Performance & Risk Assessment : Suppliers Contribute the Greatest Amount of Value to the Business as well as Attribute for Highest Levels of Risks.

Supplier's entity being a part of the supply chain of a business, not only contribute to provide the input Goods or Services for sales, or to supply resources needed to run the business, but also they provide Product Innovation; help manufacturers achieve more Effective Production Processes.

The key advantage of strong & healthy supplier relationships is that businesses gain better value as suppliers gain a more complete understanding of the businesses to serve them more effectively. Supply

Disruptions and Delays in the supply chain may decrease and the flow of operations will greatly improve.

According to **Allianz Global Corporate & Specialty (AGCS) – Top 10 Business Risks 2021, Supply Chain Disruption** stood as Number One Business Risk. **Supply Chain Disruption** is the **Probability that an Inbound Supply Problem leads to Disruption of a business**. This includes issues with Suppliers, Shipments and Markets that Disrupt Production, Operations, Sales and / or Projects.

According to a Risk Report 2019 Published by DHL Resilience360, Fragile Supply (shortages of Critical Raw Materials) **Ranked Second in Supply Chain Risk Ranking.**

In the Last Couple of Years, we have witnessed several events specially COVID -19 that has Severely Disrupted Global Supply Chains through Impeding all Transportation Routes (Air, Ocean, and ground) and Triggered Supply and Labour Shortages for key Inputs Supplies due to government-mandated Lockdowns, Quarantines and other Restrictions. The COVID-19 global pandemic created new issues and challenges for procurement organizations around the world.

Though the outbreak of novel coronavirus may not have been possible to foresee or predicted and its unprecedented spread and the consequential draconian restrictions, it has taught us measures required to contain it by reaffirming the Professional Good Practice of **Supplier Performance & Risk Assessment**.

Supplier Risks

Supplier Risk refers to **any risk relating to the operation or organisation of a supplier that may potentially have a negative impact on the activity of a client company. Supply Risk is the probability that an inbound supply problem led to disruption of a business.**

This includes issues with suppliers, shipments and markets that disrupt Production, Operations, Sales and/or Projects. Supply Risk can also result in quality problems, liability and reputational issues. Illustrated below some of Categories of Supply Risks.

Supply Risks	
Shortages	➤ Shortage of Inputs - Raw Materials, Components or Availability of Services
Delivery Failure	➤ Late Delivery, Short Delivery, Wrong Delivery (Rejections), Shrinkage (Missing or Damages in between Point of Supply & Receipt)
Quality	➤ Supplies Not Conforming to the Requirements - Quality Standards / Specifications
Cost	➤ Price Escalation, Additional Cost Elements, Increase in Taxes / Tariffs, Exchange Risk
Turnaround / Lead Time	➤ Increased Lead Time due to Supply Disruptions or Delayed Supplies
Non-Availability of Supply	➤ Out of Stock, Discontinued / Obsolete Items
Supply Shocks	➤ Sudden Drop in Supply because of Certain Accidental Events, Wars, Labour Strikes, Trade Embargoes or such other Supply Disruptions
Supplier Bankruptcy or Out of Business	➤ Supplier becomes Bankrupt or Goes out of Business / Discontinues
Business Reputation & Business Environment	➤ Supplier Relationships / Trust for Business, Health, Safety, Labour Issues, Social, Political & Environmental Risks

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Supplier Performance & Risk Assessment : Selecting Right Suppliers : Most Organizations use **Supplier Performance Management & Risk Assessment**, a good business practice that is used to **Measure, Analyze, and Manage supplier's Performance** in an effort to **Cut Costs, Alleviate Risks, and Drive Continuous Improvement**. When buying teams have a clear view of their suppliers' performance, they can Identify the Best Performing Partners, make smarter, more beneficial decisions, and develop more strategic partnerships. Therefore, Selecting the Right Suppliers is one of the most important aspects for the success of the Business. Given the high values associated with procurement, it comes as no surprise that supply chain teams are eager to learn how to improve supplier performance to deliver millions in savings for their organizations. The Right Choice of a Supplier Translates into Increased Efficiency in terms of Ensuring Continuity of Product Availability, Right Supplies (10 R's) as well as Optimization of Costs Related to the Supply Chain and Consequently Higher Profits and Business Value.



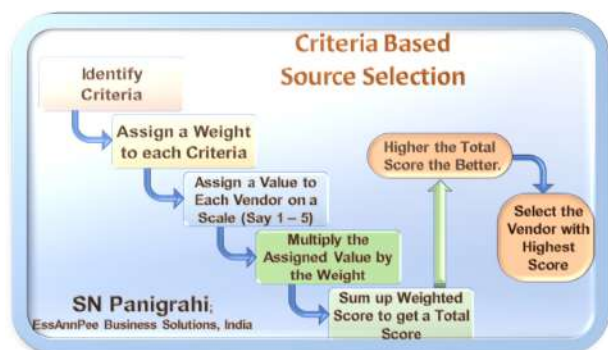
Supplier Onboarding : Supply Chain is about Chain of Supplies. Suppliers play a critical role in helping companies succeed. The entire Supply & Distribution Processes and their associated Activities – from the Inception & Design Stage all the way to the Final Sale & Delivery to the Customer – Consists of Many Interrelated Stages and Processes. If any activity in supply chain fails, then it can affect the overall outcome. It is therefore definitely worth considering the Right Policy & Strategy of **Supplier Onboarding** from very introduction of the Vendor. Supplier Onboarding is the process of initiating a new business relationship

with an external supplier and integrating that supplier into the company's systems and business processes. It is the process of collecting the Relevant Data, Information, Documents and Credentials which are necessary in order to approve or onboard a company as a vendor, or a supplier, for a business. The goal is to make the purchasing process faster and more efficient. Additionally, onboarding vendors is a significant step as it determines whether a prospective vendor is compliant with relevant laws, regulations and your corporate standards.



Source Selection Criteria : Risks associated with Supply can be alleviated to a great extent by Right Selection of Supplier by using appropriate **Supplier (Source) Selection Criteria**. Source Selection is a critical phase of the pre-award procurement process. Source selection criteria describes properties that are crucial for a purchaser when deciding on a supplier. Criteria can be subjective or objective. Individual judgment can be biased, which may require balancing with objective measures.

One approach for Source Selection is based on Certain Selection Criteria. The Process is to **identify a list of criteria** such as Financial Soundness, Technical Ability, Management Capability, Health and Safety, Reputation, Compliance; **Assign a weight to each Criteria** and then **Assign a Value to Each Vendor on a Scale (Say 1 – 5)**. Then **Multiply the Assigned Value to the Vendor by the weight** and **Sum up to get a Total Score**. Higher the Total Score the Better. **Select the Vendor with Highest Score**.



A sample Model is shown below:

Source Selection Criteria									
Scoring Model									
Criteria	Sub Criteria	Weightage	Vendor A		Vendor B		Vendor C		On 1-5 Scale
			Assigned Value	Score	Assigned Value	Score	Assigned Value	Score	
Financial Viability	Financial Stability Credit Rating History, Longevity & Accounting Financial Ratio	25	5	125	4	100	4	100	5: Meets All Requirements & Offers some added value
Technical Ability	Equipment Parts and Equipment Quality Personnel Other Facilities & Ability Quality Systems	20	4	80	5	100	4	80	4: Meets all the Requirements
Management Capability	Real Performance - Past Quality Management Organization Experience of Technical Personnel Management Knowledge	15	3	45	5	75	4	60	3: Generally knows critical requirements
Health and Safety	Organization History Health & Safety Certifications Safety Incident Rate Management Safety Accountability	15	5	75	4	60	5	75	2: Meets some Requirements but is Pending Major Steps or Issues
Reputation	Large Orders in Business Past Orders - Customer Relationships & Dissatisfied if any	10	3	30	3	30	3	30	1: Fails to meet Overall requirements, serious concerns
Compliance	Legal Status Related to any Legal Disputes	15	5	75	4	60	5	75	0: Does not meet requirements / Fails to provide / irrelevant
			Total Score		340		365		Highest Total Score

In order to find the Right Suppliers, businesses may also need to consider many other critical factors based on requirement, including:

- v Reliability
- v Responsiveness
- v Flexibility
- v Service
- v Social Responsibility
- v Convenience/Simplicity
- v Risk
- v Agility

Supplier Scorecard : Selecting the right suppliers is one of the most important aspects for the success of the Business. However, many organizations miss these opportunities as they continue to rely on outdated processes and improvement measures that are complex and cumbersome to implement.

Ardent Partners' latest supply management research covering more than 700 global enterprises has shown that

- Ø 79% of all businesses lack a comprehensive risk management program in place for their strategic suppliers.
- Ø 66% of all businesses lack an active supply risk management program.
- Ø Only 9% of all businesses have prioritized improving supply risk management over the next 12 months.

In this context it is pertinent to discuss here the Importance of **Supplier Scorecard** which is a **document that allows a business to measure the performance and effectiveness of a vendor over time**. When a company wants better vendor and supplier management, a scorecard allows them to evaluate key metrics and determine how well its vendor is **Performing or Not Performing**. Scorecards have **Metrics** or categories that buyers will use to grade their suppliers. It enables companies to **make informed supply decisions** that are optimal for the entire business.

Supplier Scorecard : A Metrics to Focus on Performance :

The **Supplier Scorecard** highlights each supplier's strengths and weaknesses across multiple areas, and quantifies the supplier's fit for each specific requirement. The areas that a company chooses to measure and manage and the criteria used will be a direct result of the company's goals and strategy and the objectives for the supplier performance management program. Supplier scorecards track metrics on a wide variety of areas of supplier performance that may be measured such as **Quality, Delivery, Cost, Ethics & Compliance, Growth Outlook & Differentiation, Business Support** etc of suppliers over time.



Conclusion:

A Scorecard allows the Organizations to evaluate key metrics and determine how well its vendors are performing. Supplier Scoring means **objectively evaluating your suppliers against predetermined criteria**.

A Scorecard system can help you measure vendor performance, push for Improvements, Foster Better Supplier Relationships, determine which suppliers to keep in your supplier base, and reward particular suppliers. A Supplier Scorecard also **Assesses a Vendor's Performance to Determine how much Risk it poses to the Contracting Organization**. By measuring and monitoring supplier performance on an ongoing and continuous basis, companies can realize some significant benefits and **improved collaboration with the suppliers**.

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GENERAL INSTRUCTIONS ON PROCUREMENT AND PROJECT MANAGEMENT

It has always been a concern and challenge for the Government and its agencies to execute public projects on time, within the approved cost and with good quality. As the Government strives to step up the pace of economic development, the role of procedure and rules, and the incentives and disincentives they create, warrants careful examination.

2. The Central Vigilance Commission (CVC) and the Comptroller & Auditor General (CAG) are among the institutions which have, at various times, had occasion to comment on procurement and project management. Taking cognizance of these issues, CVC issued a Concept Paper on Alternative Procurement Strategy suggesting various reforms. Later after elaborate consultations with various stakeholders and a reform workshop held on 18.12.2020, CVC prepared Draft Guidelines on “Reforms in Public Procurement and Project Management”. The draft guidelines inter alia stated: “Endeavour should be to explore the possibility of employing alternative procurement methods and other emerging trends apart from regularly used methods of procurement”.

Separately, the CAG held a workshop on 27th February, 2020, soliciting ideas to improve procurement and project management. In that workshop, the then CAG himself observed: “It is also important to examine the information available with the decision maker at the time of taking the procurement decision. Post facto wisdom is easy and costs of indecision high”. He hoped that the “focus of the presentations would be on discussing the challenges faced in procurement, especially that of adhering to the L1 requirement and related quality issues and new mechanisms/ strategies of procurement to overcome these challenges”.

The National Institution for Transforming India (NITI) Aayog also prepared in August, 2020 a detailed paper entitled “Indian Public Procurement: Alternative Strategies and Way Forward” with various proposals.

3. A common theme arising in all these deliberations was a need to improve procurement and project management rules and procedures, to update them to present day needs, and empower those implementing projects to take better decisions, while adhering to probity and fairness. The fact that two premier institutions overseeing probity and accountability and India’s premier policy think-tank felt the need to improve public procurement and project management

procedures indicates the importance of the issue.

4. The Draft Guidelines prepared under the aegis of the CVC provided a sound platform for initiating reforms for empowering executing agencies and officers to take effective decisions in public interest, not only without favour but also without fear. These Draft Guidelines were considered by the Committee of Secretaries, and it was decided that the Department of Expenditure (DoE) would consider and issue guidelines, after soliciting and incorporating comments from Ministries/ Departments. Comments were solicited from all Ministries/ Departments and after due and detailed consideration of the comments received, instructions as contained in the subsequent paragraphs are being issued for compliance. While the primary source of these instructions is the draft guidelines prepared by the CVC, the views expressed in the CAG’s workshop, by NITI Aayog, and in other comments received have also been duly considered and incorporated wherever appropriate.

5. The instructions below are “general instructions” within the meaning of Rule 6(1) of the GFR. They shall prevail in case of any general or case-specific conflict with the existing provisions of the Manual for Procurement of Goods, 2017, Manual for Procurement of Consultancy and other Services 2017, Manual for Procurement of Works 2019 or any other instruction issued by DoE in the past. For the purpose of these instructions:

- (i) Instructions containing ‘may’ are to be considered desirable or good practices which procuring entities/ project executing agencies are encouraged to implement but not mandatory.
- (ii) Instructions containing ‘should’ are required to be followed in general. However, there may be circumstances where it may not be practical/ desirable to implement them. In such cases, the concerned officer/ agency may deviate by recording reasons in writing for not implementing the same.
- (iii) Instructions containing ‘shall’ are mandatory; any deviation shall require relaxation of rules from the DoE (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).
- (iv) Instructions containing “allowed” indicate an optional course of action to be decided upon on

merits.

- (v) “Procuring Entity” or “Project Executing Authority” or “Project Executing Agency” means Central Government Ministries/ Departments, Attached/ Subordinate bodies including Autonomous Bodies or Central Public Sector Enterprises (CPSEs) (etc) executing projects/ works.
- (vi) “Public Authority” means the client organization, which may be asking a “Procuring Entity” or “Project Executing Authority” or “Project Executing Agency” to execute a project or work on their behalf. For example, in case a University executes the works through Central Public Works Department (CPWD), then the said university will be the public authority and CPWD will be the Procuring Entity or Project Executing Authority or Project Executing Agency. (The public authority and the project executing authority may also be the same.)

6. Feasibility Study/ Ground Survey: Before undertaking a project Feasibility study/ Preliminary Project Report (PPR) may be prepared by the Project Executing Agency as prescribed in Para 2.2.1 of the Manual for Procurement of Works 2019 (hereinafter called Manual). A presentation on the findings of the feasibility study/ PPR may be made by a team (which may include engineers/ consultants/ outside experts, finance officers etc.) before the public authority/ or designated competent authority. This is to provide an opportunity to the public authority to have an overall assessment of the situation, appraisal of various options as well as likely challenges and mitigation measures. In the case of very large projects, such presentation may be made to the head of the public authority. The record of discussions during the presentation may become part of the Detailed Project Report (DPR) and tender file/ project record.

7. Detailed Project Report (DPR):

7.1 As prescribed in Para 2.4 of the Manual, once the project is considered viable and the competent public authority gives approval, a DPR/ Detailed Estimate should be prepared with due care and accuracy, using latest technological tools collecting all relevant ground information including consultation with the field units, wherever applicable.

7.2 Presentation may be made about the DPR before the public authority, for projects above a threshold value, as decided by Project Executing Authorities. The presentation may include salient features of the project including general layout, architectural drawings, broad specifications, cash flow (over the life of the project), composition of the project team, quality management plan for the project, important milestones in the project execution, obligations of the authority and the contractor/ concessionaire (hereinafter referred to as “contractor”) and possible risks and mitigation measures. In the case of very large projects such

presentation may be made to the head of the public authority. The record of discussions during the presentation shall become part of tender file/project record.

7.3. Wherever consultants are appointed for preparation of DPR, field units of the public authorities should also be associated with the process. The inputs from these field units can be useful in proposing best solutions for design and execution of the work as they are the custodian of legacy data, which may not be available with the consultants, as they may not be operating regularly in that geographical region.

7.4. Endeavour may be made to enlarge the base of the ‘Schedule of Rates’ published by various organizations to bring a maximum number of items under its ambit. For non-scheduled items, rates may be finalized by a committee constituted by the organization concerned/ consultants as the case maybe.

8. Availability of Land and Statutory Clearances:

8.1 It is desirable to have 100% of the required land in possession before award of contract; however, it may not always be possible to have the entire land due to prevailing circumstances. Also, it may not be prudent to put the entire process of award of contract on hold for want of the remaining portion of land, which in the assessment of public authority or the project executing authority, could possibly be acquired in a targeted manner after award of the contract, without affecting progress.

8.2 Minimum necessary encumbrance free land should be available before award of contract. The minimum may be determined based on the circumstances of each case or general guidelines, issued by the concerned authorities. Only such land, non availability of which, will prevent essential components of work from execution, should be insisted upon.

8.3 Time taken in grant of statutory and other clearances also contributes to the time and cost of public projects. These clearances are required to achieve specific objectives like concern for the environment, aviation safety, preservation of national heritage, conservation of forest and wildlife etc. Public Authorities/ Project Executing Authorities should plan for obtaining all necessary clearances quickly and closely monitor the progress.

9. Pre-Tender activities:

9.1 Architectural and structural drawings: Architectural and structural drawings (fit for construction) are among the core requirements for projects. Finalization of these drawings at the earliest, preferably at the time of preparation of the cost estimate itself, can help to determine quantities of various items of the work. Adverse consequences of not preparing these drawings before invitation of tenders may manifest in the form of delay in execution of the work and deviations in quantities of the items of work. Hence, approved

architectural and structural drawings should be available before invitation of tenders. Fit for construction (sometimes called Good for construction) drawings means the architectural and structural drawings approved by the project executing authority as well as by the authority governing the extant rules/laws, including byelaws, such as local authorities.

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

9.3 Empanelment of contractors: Public authorities may empanel/ register contractors of those specific goods and services which are required by them regularly. Performance of such empanelled contractors should be reviewed periodically. The list of registered contractors shall be updated on a regular basis. The category/ class of contractors may be upgraded/ downgraded or contractors may be de-listed based on their performance. Empanelment of contractors shall be done in a fair and equitable manner, preferably online after giving due publicity. The practice of inviting bids for works tenders only from empanelled contractors may be confined to tenders up to certain threshold value, as decided by the project executing authorities.

10. Tender documents:

10.1 The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including payment terms, obligations of the procuring entity and the contractor, timeframe/milestones for execution of the project, tax implications, compliance framework for statutory and other norms, reporting on progress/ quality of the work, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Comprehensive survey & soil investigation report, area grading & mapping of underground facilities, where project is to be executed, may be made available and made part of tender document. Model Tender Documents issued by the DoE may be used, with due customisation.

10.2 In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific. The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.

10.3 Identification of milestones may be done in an

optimal and sequential manner and the same may be stipulated in the tender document along with enabling provisions.

10.4 Payment terms prescribed in the tender document should be such that the payment made to contractors at every stage is commensurate to quantum of work done, subject to any requirements for initial mobilisation.

10.5 Procuring entities may issue instructions regarding appropriate delegation of authority for approval of deviations, variations and changes in the scope of the contract.

10.6 Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document.

10.7 Quality Assurance Plan (QAP) may be incorporated in the tender document/ contract. Schedule of visit by various levels of officials should also form part of the QAP.

10.8 Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.

10.9 Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of works in various sectors can participate.

10.10 Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

11. Project Management

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

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

etc. including geo tagging.

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

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

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

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

11.7 Sub-contracting: As per Para 6.1.6 of the Manual, the works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting may be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hiring of equipment or engagement of labour will not mean sub-contracting. The total value of subcontracted work should not exceed the percentage of the contract price specified in the contract (say 25%). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.

11.8 Rejection of Single Bid: It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for re-tender as a 'safe' course of

action. This is not correct. Re-bidding has costs: firstly the actual costs of re-tendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid.

Lack of competition shall not be determined solely on the basis of the number of Bidders. Even when only one Bid is submitted, the process should be considered valid provided following conditions are satisfied:

- (i) the procurement was satisfactorily advertised and sufficient time was given for submission of bids;
- (ii) the qualification criteria were not unduly restrictive; and
- (iii) prices are reasonable in comparison to market values.

11.9 Electronic-Measurement Books(e-MBs): Project executing authorities should, as early as possible, implement e-MBs and the same should be integrated with IT based project monitoring system, being used by the procuring entities.

11.10 Extension of time for completion of projects: Procuring entity may put in place a graded authority structure whereby extension of time for completion of contract, beyond a specified threshold value of contract, may be granted by the next higher authority.

11.11 Delay in taking timely decisions: Delay in decision making by the officials of the project executing authority on various changes in the project scheme arising out of emerging situations during execution of the work is also one of the contributors to the delay in completion of projects. Sometimes timely decisions on these changes are so crucial that the next step could only be taken after addressing the change. Delay in decisions by the project executing authority can also lead to litigation due to inadequate utilization/ idling of resources of the contractor. There is frequently a feeling among officials that indecision is safe while a decision may lead to adverse consequences for the decision maker. Therefore, there is a need for project executing authorities to put in place a system of resolution of the issues coupled with timelines for various levels to take decisions.

11.12 Project executing authorities may review the flow chart of decision making and remove redundancies for faster decision making. They may also fix timelines for taking decisions on variations, extra items and changes in scope and specifications, etc. to avoid delay and litigation arising out of delayed decisions.

11.13 Awarding of works in stalled contracts: It is noted that in cases, where a contractor abandons or stops the work mid-way, either due to insolvency or a dispute or other reason, engagement of the new contractor takes considerable time and in the meanwhile public money is locked up in assets which cannot be utilized,

apart from inconvenience and loss of amenities to the general public due to such half completed works. Notwithstanding anything in the GFR or the Manual, procuring entities should devise methods (including limited/ single tenders) to deal with part completed contracts, wherever the work is abandoned by the contractor mid-way. However, for issuance of limited/ single tenders in such cases, at least 20%, of work should have been billed by the contractor who has abandoned the work. Procurement approval of such limited/ single tender should be at the next higher level or such level as may be prescribed.

12. Delay in payment to the contractors:

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

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

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

12.4 The Final bill should also be paid to the contractor within three months after completion of work.

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

13. Engineering, Procurement and Construction (EPC) contracts:

13.1 In EPC contracts, since primary responsibility to execute the work lies with the EPC contractor, success of the project also depends upon the quality of the tender document wherein enough clarity on the broad framework for execution of the work and the obligations of the contractor needs to be built in.

13.2 Milestones for payment to the contractor should be fixed in a manner that facilitates smooth cash flow for the contractor as well as for progress of the work. Milestones fixed should avoid excessive front loading or back loading, i.e., amount of payment should be commensurate with stage-wise quantum of work/ cost incurred. Milestones for payment to the contractor should also be linked with the deliverables.

13.3 In case of EPC contracts, only general arrangement drawings and architectural control parameters should be part of the EPC tender document. In case of EPC contracts, timelines for submission of drawings by the contractors and approval thereof by the competent authority should be clearly prescribed in the tender document, wherein, damages for non-adherence of such timelines in this regard may also be incorporated.

13.4 EPC contracts shall specify broad technical specifications and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:

- (i) Limitation of liability for procuring entity as well as contractor,
- (ii) Deviation limits and procedure for change of scope.
- (iii) Contract closing timelines and procedure to ensure timely closing of the contract.
- (iv) Performance parameters and liquidated damages for shortfall in performance.
- (v) Risk matrix and responsibilities of the contractor and the procuring entity.

In addition, a latent defect period beyond the defect liability period may be included to protect the procuring entity and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.

13.5 To mitigate the risk involved in the methodology proposed by the contractor, the project executing authority shall either have an in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer to intensively examine the proposal submitted by the contractor. Project executing authorities are to ensure that optimal technological solutions are provided by the contractor.

13.6 To ensure quality, regular inspection and quality checks must be carried out. The Project executing

authority shall carry out stage inspections in manufacturing of critical equipment/ critical activities of the project.

14. Substitution of key personnel during execution of consultancy contract:

- (i) Quality in consultancy contracts is largely dependent upon deployment and performance of key personnel, during execution of the contract.
- (ii) The following conditions should be incorporated in Tender Documents for procurement of Consultancy Services:
 - a) Substitution of key personnel can be allowed in compelling or unavoidable situations only and the substitute shall be of equivalent or higher credentials. Such substitution may ordinarily be limited to not more than 30% of total key personnel, subject to equally, or better, qualified and experienced personnel being provided to the satisfaction of the procuring entity.
 - b) Replacement of first 10% of key personnel will be subject to reduction of remuneration. The remuneration is to be reduced, say, by 5% of the remuneration which would have been paid to the original personnel, from the date of the replacement till completion of contract.
 - c) In case of the next 10% replacement, the reduction in remuneration may be equal to (say) 10% (ten per cent) and for the third 10% replacement such reduction may be equal to (say) 15% (fifteen per cent). In case such percentages are not relevant, or for some other practical considerations, for a particular contract, the procuring entity may formulate a suitable mechanism following the above logic, which should be specified in the tender documents.
- (iii) Public authorities may make use of IT enabled systems at the designated place of deployment to ensure presence of key personnel as per the schedule of deployment.

15. Additional Methods of Procurement:

15.1 Fixed Budget - based Selection (FBS) for consultancy services:

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

- (i) the type of consulting service required is simple and/or repetitive and can be precisely defined; and

- (ii) the budget can be reasonably estimated and set based on credible cost estimates and/ or previous selections which have been successfully executed; and

- (iii) the budget is sufficient for the consultant to perform the assignment.

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

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

15.2 Quality-cum-Cost based Selection (QCBS) for Works and Non-Consultancy Services :-

15.2.1 Procuring entities are hereby allowed to use QCBS for procurement of works and non-consultancy services in the following cases:

- (i) where the procurement has been declared to be a Quality Oriented Procurement (OOP) by the competent authority or
- (ii) for procurement of Non-Consulting Services, where estimated value of procurement (including all taxes and option clause) does not exceed Rs 10 crore.

Note: In cases where estimated value was less than Rs 10 crore, but on tendering, following QCBS process, it is proposed to place contract for more than Rs 10 crore, the following procedure shall be adopted:

- (a) In case the difference between estimated value (including taxes etc as above) and value of the proposed contract (including taxes etc) is less than 10% of the estimated value, there will be no bar on placement of contract.
- (b) In all other cases, the procurement process is to be scrapped and restarted either as OOP or on non QCBS basis.

The principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of the non-financial parameters shall in no case exceed 30%.

15.2.2 The Competent Authority for allowing QCBS shall be as follows:-

- (i) For declaring a procurement as OOP:
 - a) Where the procuring entity/ project executing authority is covered by Rule 1 of GFR, the Secretary of the Ministry/ Department, to which the procuring entity belongs.
 - b) Where the procuring entity is a CPSE, the Board of Directors of the CPSE.
- (ii) For Non-consulting Services not exceeding Rs.10 crore in value:
 - a) Where the procuring entity is covered by Rule 1 of GFR, by the officer or authority two levels above the officer/ authority competent to finalize the particular procurement, or the Secretary of the Ministry/ Department whichever is lower.
 - b) Where the procuring entity is a CPSE, the authority or officer two levels above the officer competent to finalize the particular procurement, or the Board of Directors of the CPSE whichever is lower.

15.2.3 In all cases of QOP, a Special Technical Committee (STC) shall be constituted with the following composition:-

- (i) Two or more persons who have expert knowledge and/or long experience relevant to the procurement in question;
- (ii) One or more persons with extensive experience in handling public projects and/or public finance in the Government or State/Central Public Sector;
- (iii) One or more persons with experience in financial management/ financial administration/audit/accountancy;
- (iv) Not more than one member representing the procuring entity who may inter alia provide administrative support to the Committee.
- (v) Any person who is a member of the STC shall not associate himself in any manner with any bidder for the procurement concerned.
- (vi) The persons referred to in sub paras (i) to (iii) shall be persons not working under the Competent Authority specified in para 15.2.2 and shall not belong to any organization under the control of, or receiving funding from, the procuring entity or the Ministry/ Department to which such procuring entity belongs.

15.2.4 The names of members of the Special Technical Committee shall be decided either by the Competent Authority specified in para 15.2.2 above or by any other authority to whom such power is delegated by the competent authority; however, powers shall not be delegated to the officer or authority competent to finalize the particular procurement. Sitting fee may be

paid to the members of the STC. Incidental costs including travel shall be paid by the procuring entity.

15.2.5 The STC shall make specific recommendations on the following matters:-

- (i) The weight to be given to non-financial parameters (not exceeding 30%).
- (ii) The specific quality/ technical parameters, their weights, their scoring methodology, the minimum qualification score etc. and other relevant criteria necessary for ensuring fair and transparent quality/ technical evaluation of the bids.

The recommendations of the STC shall be followed except where there are special grounds in public interest for deviating from them. However, every case of deviation from the recommendations of the STC shall require approval of the Competent Authority specified in para 15.2.2(i) above who approved the declaration of the procurement as OOP.

15.2.6 In respect of QCBS for Non-Consultancy Services not exceeding Rs.10 crore, a Technical Committee shall be constituted to carry out functions mentioned in para 15.2.5 in lieu of the STC. The composition of the Technical Committee shall follow the provisions of para 15.2.3 (i) to (v). The provisions of 15.2.3 (vi) shall however not be applicable in such cases.

15.2.7 Grounds for Declaring a Procurement to be Quality Oriented Procurement: A procurement should be declared as a OOP only if there is enough justification in terms of value addition or enhancement of delivery or paramount importance of quality. Reasons for not adopting two cover/ pre-qualification-based/ least cost system shall be documented.

15.2.8 Tender Documents - Fixing/ Selection of the Evaluation/ Qualification Criteria

- (i) To ensure quality, some of the criteria used in marking may be made mandatory and if a bidder does not meet those, then bids shall not be evaluated further.
- (ii) Weightage may also be given for timely completion of past projects of similar nature by the bidder.
- (iii) In all cases of OOP, a pre-bid meeting shall be held in which the technical criteria including the marking scheme shall be discussed with the potential bidders. If any changes in the criteria are necessitated by such consultation, such changes shall require the recommendation of the STC. In Non-Consultancy Services, pre-bid meetings may be held at the discretion of the public authority.

15.2.9 Fixing of Scoring/ Marking Criteria:

- (i) The scoring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar scores irrespective of the persons/

experts being involved in the evaluation process. When the outcomes are consistent for the available information, the QCBS parameters are more reliable. Unambiguous description and criteria help to avoid grey areas so as to ensure that there is only one possible score for the item. As far as possible, the criteria should be so specific and clear that bidders can self-mark their own bids.

- (ii) It is better to specify minimum marks for meeting the qualifying criteria specified.
- (iii) Examples of fixed quality parameters that ought not to be considered for relative scoring include organizations' ISO/ standards' accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between various bidders.
- (iv) Bidders should be asked to produce certificates for the past performance. A format may be given in the tender itself outlining the contract details, completion, sustainability of service etc and bidders may be asked to fill it and give evidence to that effect.
- (v) Bidders may be asked to submit a detailed presentation on their proposals in the form of soft copy along with the bid so as to facilitate better understanding of their proposal and to ensure commitment.
- (vi) Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPIs) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

15.2.10 Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted. However, members of the STC shall not be involved.

15.2.11 Joint ventures in QCBS:

- (i) In conventional tenders, some bidders adopt "name borrowing" and Joint Ventures (JV) often do not function in letter and spirit. This results in lack of quality and accountability. JVs often end in one-sided participation, diluting the essence of the tender evaluation during its performance. Since quality is given weightage in the evaluation itself, in QCBS procurement, it is even more important to guard against such tendencies. Therefore, Joint Ventures may be avoided in QCBS procurements as far as possible. Joint Ventures could, however, become necessary in high technology or innovative projects where a single entity may not be able to execute the work alone.
- (ii) If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measures should be taken to ensure that all the JV partners are present and deliver services all through the contract period. An Implementation Board with participation of all

JV partners may be provided for wherein the Project Manager from the procuring entity shall also be allowed audience when required. Meeting of JV partners with the project executing authority for quarterly progress review may be made as a criterion linked to achievement of key dates or even payment.

16. Arbitration and dispute resolution:

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

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

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

16.4 Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with interest, at a rate which is often far higher than the Government's cost of funds. This results in huge financial losses to the Government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult.

Instructions have been issued in this matter in the past but have not been fully complied with. The GFRs have now been amended accordingly.

16.5 All procuring entities and public authorities are required to comply with Rule 227A of GFRs. The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite Bank Guarantee and /or fails to open escrow account as required. Persons responsible for not adhering to the Rule 227A of the GFRs are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

17. Aligning the interest of stakeholders

17.1 The incentive structure for all the key stakeholders of public procurement ought to be such that the system itself will ensure timely delivery of the projects/works in a qualitative manner within approved cost. A balanced framework and work culture, where risks and rewards are properly shared amongst stakeholders and timely completion of quality projects is the common goal, can be the bedrock of efficient project management. An incentive structure, which may include pecuniary as well as non-pecuniary aspects (including public recognition), linked with measurable parameters of outcome/output, can help align the interests of stakeholders. An ethics-based regime, wherein integrity of all the stakeholders is nurtured, can help increase efficiency in all aspects of project management.

17.2 Public authorities may devise strategies to provide incentives to contractors/ concessionaires/ consultants/ architects/ other stakeholders by various means, including bonus, better rating and recognition for early/ timely and quality completion of projects. Similar strategies may be devised for recognition of engineers/ officers/ other team members for early/ timely and quality completion of the projects. The practice of mentioning the names of contractor and the project in-charge publicly at work sites may be implemented. Such recognition may be in a form which has long shelf life so as to associate the contractor and project in-charge with the life of the project.

17.3 "Coming together is a beginning; keeping together is progress; working together is success." It is an accepted fact that the success of any project is dependent on a well-co-ordinated team working towards a common goal. For successful execution of any project within specified time, cost and quality, the interest of all the stakeholders needs to be aligned. Coordinated efforts of all stakeholders such as contractors, consultants, public authority and project executing authority and public representatives will bring about the best possible outcome.

(Kanwalpreet)
Director (Procurement Policy)
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Indian Institute of Materials Management

MISSION

- To promote professional excellence in Materials Management towards National Prosperity through sustainable development.

OBJECTIVE

- To secure a wider recognition of and promote the importance of efficient materials management in commercial and industrial undertakings.
- To safe guard and elevate the professional status of individuals engaged in materials management faculty.
- To constantly impart advanced professional knowledge and thus improve the skill of the person engaged in the materials management function.
- Propagate and promote among the members strict adherence to IIMM code and ethics.

CODE OF ETHICS

- To consider first the total interest of one's organisation in all transactions without impairing the dignity and responsibility of one's office :
- To buy without prejudice, seeking to obtain the maximum ultimate value for each rupee of expenditure.
- To subscribe and work for honesty and truth in buying and selling; to denounce all forms and manifestations of commercial bribery and to eschew anti-social practices.
- To accord a prompt and courteous reception so far as conditions will permit, to all who call up on legitimate business mission.
- To respect one's obligations and those of one's organisation consistent with good business practices.

GET PUBLIC PROCUREMENT POLICY RIGHT: L1 FOCUS HAS TO GO; GOVT MUST INSTEAD GIVE PRIMACY TO POTENTIAL DELIVERY OF HIGHER QUALITY

India's infamous L1-itis affliction has hobbled its infrastructure in many instances; indeed, the experiences of BSNL and ONGC that have lost out because of the this constraint.

The Centre has done well to ease the norms for purchases of Covid essentials. The Economic Times reports the Centre has allowed the procurement of the same Covid-critical item at different rates, while opening up procurement below Rs 200 crore for global tendering; last year, this had been debarred under the Atmanirbhar Bharat initiative, with the objective of helping domestic MSMEs. Special relaxations have also been allowed to the department of pharmaceuticals and the Defence Research and Development Organisation (DRDO).

Given there is a desperate need to ramp up supplies of crucial medical-care elements including oxygen, and key Covid-19-care drugs, the relaxations of the procurement norms are certainly welcome. That said, India needs a more mature procurement policy, and not just during crises. It can't, for instance, fixate on the lowest bid for procurement of a service or good. That may still match the government's specified criteria but the low cost could become a barrier against quick execution or deny the taxpayer a higher quality of services or goods.

One example, explained in detail by i3g Advisory Network's Srikant Sastri in an article in The Times of India, best illustrates this problem. Last year, when the pandemic hit the country, the government quickly cobbled together tenders for, among other things, oxygen generators of 15 different capacities and set an unrealistic execution deadline. Top players participated, but talked of more "realistic delivery commitments".

Predictably, they didn't win the bid; the contract went to two other players that had little demonstrated capability in the matter, but offered the lowest bid value and committed to meeting the

deadline. Needless to add, little had been delivered even after the deadline had elapsed more than twice over. Critical healthcare procurement, therefore, was dealt a body-blow by myopic procurement norms. And, the government still ended up spending a lot of money! Indeed, India's public procurement forms a very large chunk of its GDP—against the US's 9% and the OECD average of 12%, India's public procurement constitutes nearly a quarter of its GDP.

India's infamous L1-itis affliction has hobbled its infrastructure in many instances; indeed, the experiences of BSNL and ONGC that have lost out because of the this constraint, as pointed out by this newspaper several times, show how desperately the procurement policy needs to shift away from a focus on the lowest-cost-bidder. How limiting India's procurement policy has been is evident from the fact that, some years ago, the government was forced to abandon a tender when the US-based MNC General Electric emerged as the single bidder; this was despite GE's bid being lower than the internal estimate of what it would cost the relevant government concern to execute the work itself.

Moving away from this will require a change in mindset. While the ONGC board has accepted a proposal from a consulting group on rejigging its tendering process to give more weight to the technical criteria before looking at the costs, true change will come about only when, among other things, the government works to dispel the CAG/CVC cloud over discretionary procurement—while retaining enough safeguards against graft—and frees PSUs from the "instrumentalities of the state" tether. This is especially needed given the pace of technological leaps, and public procurement of goods and services must focus on getting the best; costs and other factors will need to come second, after quality.

SOURCE: The Financial Express



BETTER, SMARTER AND FASTER PUBLIC PROCUREMENT IN 9 EASY STEPS

ANTOINE BELAIEFF



Let's be honest, no one likes procurement. In all the roles I've held—civil servant, consultant or in tech—I have often felt that life would be easier and better without procurement. In my daydreams, I was able to buy and sell with abandon without pesky requests for information, quotes, qualifications or proposals. Everything would be so much faster and possibly even cheaper! Governments would be nimble!

While the procurement process can be arduous, it's also a critical force in ensuring that products and services are purchased responsibly.

Procurement as a Force for Good

Procurement ensures that juicy contracts don't go to your BFFs at exorbitant prices. It also forces buyers to think hard about what they need and to nudge the marketplace to compete on quality, speed and price. This is supposed to spur a virtuous circle of innovation and competitiveness. Instead, procurement has become a slow, difficult and cumbersome process. How can this process be fixed? By streamlining procurement.

Stimulus Funds Mean More Procurement

Stimulus money is flowing—or about to flow—and public expectations are sky high. The ability to acquire the right products and services quickly has become critical. What can local and regional governments do differently to improve procurement?

Here are nine ways in which procurement can get you what you need, faster, cheaper and easier:

1. Understand what you are trying to accomplish and for whom. The best procurement documents are clear about goals and objectives, including what is not in scope, and the broader policy context. Trade-offs and conflicts should be identified ahead of time by engaging all relevant stakeholders. If you don't have a clear

picture of what you want, vendors will try to guess, and you may not like the result. And make sure the document as a whole reflects your objectives. Too often, documents are Frankenstein-type creations cobbled together from excerpts of previous documents – either internal or obtained from peer organizations. Without careful editing, the documents fail to convey exactly what you need or even contain contradictions.

2. Focus on outcomes, not specific requirements. Procurement documents contain a lengthy list of requirements for the good or service being purchased. The collection of multiple requirements assembled bottom up is less likely to be available in a single solution. But extensive requirement lists add complexity that can make the overall product or solution hard to grasp as a whole, leading to potential contradictions or trade-offs. The more requirements included also means it is less likely that states and localities will be able to find a single solution. Basically, this puts them at risk for shutting out competent and innovative bidders and only receiving bids with extensive custom (i.e. expensive) work.

A procurement document with a clear vision and outcomes and fewer prescriptive requirements is more likely to elicit many solid and innovative proposals from the marketplace. Make sure you describe the strategic and functional outcomes you are trying to accomplish, and anchor them to policy objectives. Take a risk management approach: What could go wrong with fewer requirements and a focus on outcomes only?

3. Research what you are buying, but also how to buy it. To meet your needs, issue your own well-structured request for information and interview a wide variety of vendors and clients — including from other regions and countries — with your own questions. Ask them to outline both their current offering and their product roadmap. Don't hesitate to ask how you can design the best procurement process.

4. View pilots as part of your RFI. Getting to understand the marketplace can involve trying products and services or conducting pilot projects in a real-world setting with solid research questions and extensive user feedback. Pilots can help you and, your decision makers and the public in your community gain a first-hand understanding of new goods and services, so think of trials as an integral part of your RFI process, not your

RFP. By then it's too late.

5. Keep the scope manageable. Because issuing a RFI or RFP in the public sector can be such a difficult and lengthy process, it can be tempting to try to solve multiple business problems in one shot. The result can be an unwieldy purchasing process and suppressed vendor response. Reducing the scope and making it more targeted can lead to better overall outcomes.

6. Retire the "single accountable vendor" mantra. The public sector loves to have a single supplier providing a range of related products and services on behalf of several firms. In reality, unless independent vendors are used to working together, you risk being charged extra for the integration risk and losing control over coordination.

Procurement with an excessively broad scope can also conceal mediocrity. Depending on how submissions are scored, a contract can be awarded to the submission with the best average score, instead of one with the best score in each category. If you have the capacity to coordinate and integrate internally, source individual elements separately based on their individual strengths.

7. Force yourself to justify not going for off-the-shelf products. Every client thinks that their needs are unique, especially if they identify them as a wish list built by committee. Often that's not the case. Instead, research what the marketplace can offer in the form of off-the-shelf, plain vanilla offers, and identify gaps. Off-the-shelf products and services are cheaper, less risky and faster to build or deliver, easier to maintain (and replace, if needed), and connect you to a global community of clients.

8. Make the process easier and more streamlined through empathy. Apply the platinum rule: Treat others the way they want to be treated. Making the process easier and more streamlined will ensure that more potential vendors will have the time and resources to respond, and fewer will be disqualified. This approach will reduce the cost of responding, which you ultimately are paying for.

Think also about the vendors that might be excluded by the process, and the impact on your desired outcomes. For example, a large incumbent can keep recycling the same response, but they may not have the best price, or the most innovative ideas.

Challenge each clause and table in the document, in the context of the target audience. For example, what is the impact of insurance requirements on small businesses? Are your intellectual property clauses consistent with your vendors' business model?

9. Value excellence in procurement. Finally, if you are the end buyer, value excellence in procurement. Only excellent practitioners know how the system can help achieve your outcomes. And if you are a procurement professional, the more you know about your clients' true objectives — and it takes skills and patience to uncover them — the better service you will provide.

Antoine Belaieff is the Lead, North America at FAIRTIQ. Prior to that, Antoine spent 10 years at Metrolinx, the Toronto Region's transit authority in senior roles in innovation, sustainability, long-range planning, customer and fare experience.

Source: www.route-fifty.com

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COMMODITY INDEX

Commodities	Days's Index	Prev. Index	Week Ago	Month Ago
Index	3453.1	3500.3	3419.8	3387.3
Bullion	7664.1	7962.9	7578.5	7478.8
Cement	2563.8	2563.8	2563.8	2563.8
Chemicals	3782.0	3782.0	3529.6	3033.5
Edible Oil	3308.8	3246.9	3088.6	2921.8
Foodgrains	2630.2	2625.3	2564.4	2522.6
Fuel	3533.9	3533.9	3533.9	3533.9
Indl Metals	1920.2	1920.2	1920.1	1920.1
Other Agricom	2324.9	2345.1	2304.1	2353.9
Plastics	2353.7	2386.1	2416.7	2415.0

Source: ETIG Database dated 25th February 2022.



WTO UPDATE

WTO ISSUES CALL FOR PAPERS FOR 2022 ESSAY AWARD FOR YOUNG ECONOMISTS

The WTO has issued a call for young economists to submit papers for the 2022 WTO Essay Award. The aim of the award is to promote high-quality research on trade policy and international trade cooperation and to reinforce the relationship between the WTO and the academic community. Essays must be submitted by 6 June 2022.

More

- Essay Award for Young Economists
- Economic research

Last year's winners, Tomas Dominguez-lino of New York University and Swapnika Rachapalli of the University of Toronto, said it was an honour to be selected for the essay award. They expressed hope that their respective findings would enrich trade discussions.

"I hope my work contributes to grounding the research agenda in sustainable development," Mr Dominguez-lino said of his paper, which examines how imposing environmental tariffs on agricultural imports from South America could lead to carbon leakage.

Ms Rachapalli, whose paper on how global value chains enable not only the transfer of goods but also knowledge and ideas, said: "I look forward to furthering my understanding on the costs and benefits of international trade."

Prize

The annual WTO Essay Award provides a prize of CHF 5,000 to the author(s) of the winning essay. In the case of a co-authored paper, the prize will be equally divided among the authors. The winning paper will be officially announced at the annual meeting of the European Trade Study Group (ETSG), the largest conference specializing in international trade. The award ceremony will take place on 8-10 September 2022 at the University of Groningen in The Netherlands. The winning author will receive funding to attend the meeting.

Selection

An Academic Selection Panel is responsible for the selection of the winning paper. The panel comprises:

- Professor Beata Javorcik (University of Oxford)

- Professor Robert Staiger (Dartmouth College)
- Professor Alberto Trejos (INCAE Business School).

Dr Robert Koopman (Director, Economic Research and Statistics Division, WTO Secretariat) is ex officio member of the panel. Dr Roberta Piermartini (Chief, Trade Cost Analysis Section, WTO) coordinates the work of the selection panel.

Eligibility

The paper must address issues related to trade policy and international trade cooperation. The author(s) of the paper must possess or be engaged in the completion of a PhD degree and, if over 30 years of age, be no more than two years past a PhD defense. In the case of co-authored papers, this requirement shall apply to all authors. In addition, to be considered for the award, essays cannot exceed 15,000 words.

More news on the WTO Essay Award is available [here](#).

Past winners

- 2021: Tomas Dominguez-lino (New York University) and Swapnika Rachapalli (University of Toronto)
- 2020: Xian Ding (Harvard University)
- 2019: Jan Bakker (Oxford University) and Federico Huneus (Princeton University)
- 2018: Alonso de Gortari (Harvard University)
- 2017: Meredith Startz (Princeton University)
- 2016: Matthieu Bellon (Columbia University)
- 2015: Christoph Boehm (University of Michigan), Aaron Flaaen (Federal Reserve Board of Governors in Washington D.C.) and Nitya Pandalai-Nayar (University of Michigan)
- 2014: Jonathan Dingel (Columbia University) and Claudia Steinwender (LSE)
- 2013: Felix Tintelnot (Princeton University)
- 2012: Treb Allen (Yale University)
- 2011: Rafael Dix-Carneiro (University of Maryland) and Kyle Handley (Stanford University)

- 2010: Dave Donaldson (MIT) and Olena Ivus (Queen's University)
- 2009: Ralph Ossa (University of Chicago). The runner-up was Mostafa Beshkar (University of New Hampshire)

Deadlines

Essays must be submitted by **6 June 2022**. The Economic Research and Statistics Division of the WTO Secretariat will shortlist eligible papers by **17 June 2022** and the selection panel will take a final decision by **15 July 2022**. Only the author(s) of short-listed essays will be notified.

Publication

The winning essay may be published in the WTO Working Paper Series. It is the responsibility of the author(s) to endeavour to secure publication of the contribution in a journal.

Submissions

All submissions should be sent to essay.award@wto.org. Submissions should include as separate attachments in PDF format:

1. the essay
2. the CV of the author(s), specifying (i) current affiliation(s), (ii) the academic institution awarding the PhD, (iii) the year (or the expected year) of the PhD, (iv) the date of birth of the author(s).

Source: WTO Website

Food procurement: India to seek permanent solution at WTO

"Now that the 12th meeting is approaching, a number of submissions are being made at the WTO for advancing negotiations in agriculture. India along with the G33 group of nations has been engaging in achieving a permanent solution to the public stockholding issue," one of the officials said.

Written by FE Bureau

India will push for a permanent solution to the issue of public stockholding for food security purposes at the four-day ministerial meeting of the World Trade Organisation (WTO) in Geneva, starting from November 30.

It will also seek a special safeguard mechanism (SSM), along the lines of the one available to developed countries, to protect its farmers from any irrational spike in imports, official sources said.

"Now that the 12th meeting is approaching, a number of submissions are being made at the WTO for

advancing negotiations in agriculture. India along with the G33 group of nations has been engaging in achieving a permanent solution to the public stockholding issue," one of the officials said.

India's key procurement programmes are already adequately protected for perpetuity from penal provisions under the peace clause, which was first secured at the WTO's Bali ministerial in 2013 (its permanent status was affirmed in late 2014). The clause came into existence after all members had agreed not to drag the country to the WTO dispute mechanism even if its subsidy ceiling in food procurement is breached.

However, India has been trying to find a permanent solution to this so that even if a member nation reneges on its promise, the disputes settlement mechanism of the WTO won't consider its appeal, analysts said.

The latest move comes following a deadlock over a permanent solution to the issue of public procurement for food security at the ongoing 11th ministerial conference, as the US retreated from its commitment at the Nairobi ministerial in 2015 to work towards finding a permanent solution on it by December 2017.

Under the WTO norms, a member's food subsidy bill should not exceed the limit of 10% of the value of production based on the reference price of 1986-88. India has been pitching for a revision of this formula, as it fears the rule can potentially impair its ability to scale up its procurement programme substantially to ensure food security to a larger section of its population, most of whom are poor.

India has invoked the clause for its rice procurement in 2018-19 and 2019-20, as its subsidy level hit 13% and 11%, respectively.

The current discourse in agriculture negotiations at the WTO includes developed members seeking developing countries to take on additional commitments in terms of enhanced market access, reduction in policy space through reduced domestic support.

New Delhi is also co-sponsoring a G33 proposal for a permanent solution on the stock holding issue at the WTO.

The chair of the committee on agriculture (special session) of the WTO has come up with a draft ministerial text on the issue for the 12th ministerial conference wherein two options have been proposed, including the one to continue negotiations on it beyond the 12th ministerial meeting. However, India has not agreed to these options, the official said.

Source: WTO website.

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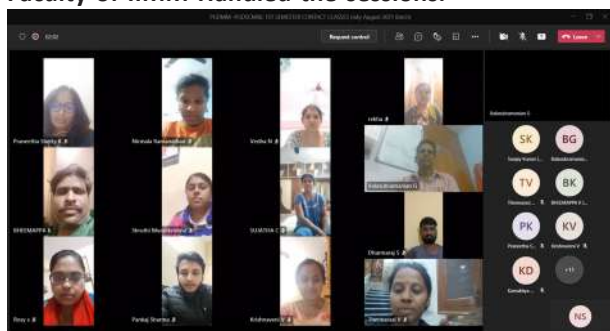
BRANCH NEWS

BANGALORE BRANCH

28th December 2021 : Indian Institute of Materials Management, Bangalore, organized a Lecture Program for on 28th December 2021 on “How to Build and Focus on Your Career” in association with WTC, Bangalore, Chennai and Kochi. By Mr. Ramanathan Subramaniam, MBA, CRIS, General Manager, IT, Johan Distilleries Ltd spoke on the subject. Around 140 members and SCM professionals attended lecture program. Webinar was highly informative and interactive. We received very good feedback from the Participants.

13th January 2022 to 17th January 2022 – Contact Classes for PGDMM/PGDSCM&L

IIMM Bangalore branch conducted contact classes for PGDMM/PGDSCM&L 1st Semester students. Senior Faculty of IIMM Handled the sessions.



20th January 2022 - Study Circle Meeting: IMM Bangalore Branch organised a Study Circle meeting on overview of “Emerging Technologies” on 20th January 2022 (Thursday) from 6.30 pm to 7.30 pm. On M.S. Team meet by Mr. G. Balasubramanian, BE- Mech, NIT Allahabad, MBA, M.S. BITS Pilani, GDMM-IIMM, Independent Consultants spoke on the subject. It was outstanding presentation and interesting. The study circle meeting was conducted by him a close overview on emerging technology which will drive the future and was useful and well received by the participants. Mr. A.V. Sham Sundar, Branch Vice Chairman welcome the gathering. Mr. M.R. Acyuth Rao, Honorary secretary proposed vote of thanks.

25th January 2022 -Inhouse Training Program: IIMM Bangalore Branch started 2 months in house Training Program on “Purchasing and Vendor Managed Inventory” on 25th January 2022 (Tuesday) for the executives of MechAero Components Pvt Ltd. Doddaballapur. Senior Faculty of IIMM Bangalore Handling the sessions.

29th January and 5th February 2022 Two-day workshop: IIMM Bangalore Branch organized A Two-day workshop on “Communication and Advanced Negotiation Skills” online on 29th January and 5th February 2022 from 10.00 am to 1.00 pm on MS team Application. Session handled by Senior Faculty of IIMM. We have received good feedback on this

workshop and that the take-aways are very useful in their day-to-day work.

6th February 2022 – Induction Session for 18th Batch of CSCM Program: IIMM Bangalore Branch organized induction Session for 18th Batch CSCM Course on 6th February 2022. Mr. G. Balasubramanian, Sr. Faculty handled the session. 18th Batch of Candidates and Faculty attended the session.



12th February 2022 - Evening Lecture Program:

Indian Institute of Materials Management, Bangalore, organized the Monthly Lecture Program on 12th February 2022 on “Union Budget 2022 and 7 Engines of Growth” – Key Highlights by Mr. Guruprasad V,B Com, ACA, ACMA, ACS, CMA(USA), FIPA (Australia), FFA (UK), Past President, IMA, Bangalore Chapter

Around 90 Members and SCM professionals attended the program. Speaker has discussed key highlights of Union Budget 2022 and covered on Understanding of present state of Indian Economy. The approach is driven by seven engines, namely, Roads, Railways, Airports, Ports, Mass Transport, Waterways, and Logistics Infrastructure. Also, he Key highlighted on the union budget 2022 about all seven engines will pull forward the economy in unison. These engines are supported by the complementary roles of Energy Transmission, IT Communication, Bulk Water & Sewerage, and Social Infrastructure. Finally, the approach is powered by Clean Energy and Sabka Prayas – the efforts of the Central Government, the state governments, and the private sector together – leading to huge job and entrepreneurial opportunities for all, especially the youth. proposed key changes in Income Tax Laws & Procedures, GST & Customs. At the end the Speaker provided detailed clarifications on various queries of the participants. We received good feed back from the members.

20th February 2022 - Study Circle Meeting: IIMM Bangalore Branch organized a Study Circle Meeting on 20th February 2022 on the Theme: “Microsoft Team Introduction” Speaker Mr. Vipin Pal, ABB Electrification Business ELDS (Nasik) gave presentation address the members. Program was very information well received by the participants.



IIMM Bangalore Branch organised Two day workshop on Communication and Advanced Negotiation Skills on 29th January and 5th February 2022.

HYDERABAD BRANCH

The Webinar “Reframing JIT Supply Chain post COVID – 19” organized by IIMM Hyderabad on 13th Feb’2022; Speaker : PM Balaji, Vice President - Toshiba, Japan was made success by all the Support & Participation of the Concerned with 56 Registrations.

IIMM National President with other NEC Members also Graced the Occasion.

Participation witnessed from Various Fields – Manufacturing & Service Sector Specially from Hospital & Health Care, Pharma, Logistics, Cement & Infra. Participants were also from Public Sector - Defense Sector (ISRO & Airforce). Students as well as Working Professional Participated in the Event.

Delegates actively Participated & Interacted making the Event a Great Success.



The Branch has conducted Monthly EC Meeting on 27th Feb’2022 where the matters related to Branch Student Admissions & Membership drives were discussed. Chairman Sri Janardhan Rao informed that 17 Admissions were already completed and also 4 Life Members are inducted to the Branch.



IIMM Hyderabad Branch Planning to Organize a Webinar on **EXIM Logistic Challenges : Strategies for Overcoming Obstacles & Latest Developments** On 20th Mar’22 (Sunday). E- Certificate shall be Issued to All the Participants.



Interested candidates may attend the Program by Paying Webinar Fee : Rs 500 per Participant Payable in Favor of

Indian Institute of Materials Management - Hyderabad Branch

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After the Payment Please Register @ to Receive Joining Link <https://us02web.zoom.us/join/register/tZAlfuCsqzgvHNPBa5OOGDQ4OsKGLM-jAzwa>

NAGPUR BRANCH

WORKSHOP ON CONTRACT MANAGEMENT TO EXECUTIVES OF ADANI POWER MAHARASTRA LIMITED

IIMM Nagpur Branch conducted a 3 hour long webinar on Contract Management for the executives of Adani Power Maharashtra Limited, Tirora, Dist Gondia Maharashtra on the 26th of February 2022. The resource person for this webinar was Dr. Shishir Dutta, an

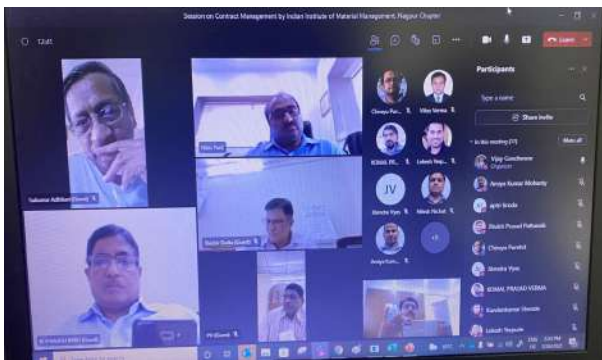
eminent speaker on the topics of Contract Management, Supply Chain Management, Project Management, Inventory Management, etc.

Dr Shishir Dutta has published several research papers and business cases on these subjects and is the Author of the bestselling Book "CONTRACT MANAGEMENT". He is a certified Project Management professional and also a qualified lead auditor in management systems.

The Webinar was attended by over 30 executives, of various levels, of Adani Power Maharashtra Limited , Tirora and Raigarh (CG), and the topics ranged from the Importance of Contract Management, Pre and post contract management, Lifecycle of contract management, Settlement of disputes, exit/closure of contracts. The session was followed by an interactive session with the Participants and Dr Dutta. The Participants received the entire session very well and the programme was highly appreciated by the senior executives of Adani limited. This is the first of the series of sessions and workshops which IIMM Nagpur Branch will be conducting with Adani Limited and other large organizations. IIMM Nagpur has also planned to conduct a one day workshop on procurement through the GeM Portal on the 12th of March, 2022.

The webinar was also attended by Mr. P V Babu, Chairman IIMM Nagpur Branch, who welcomed the participants and briefly described the plans of IIMM Nagpur Branch, Mr. N V Raghu Babu, VP- Central and National Councilor, IIMM Nagpur Branch, who introduced the topic for the session, and Mr. Sukumar Adhikari, Honorary Secretary, IIMM Nagpur Branch,, who introduced the resource speaker, Dr. Dutta.

IIMM Nagpur Branch is grateful to the management of Adani Power Maharashtra Limited for having given us the opportunity to conduct this webinar, and is looking forward to several of such sessions and workshops.



NEW DELHI BRANCH

IIMM Delhi branch organized induction programme on February 27, 2022 for the January 2022 Batch Students of PG courses. Fifteen students attended the programme. Chairman Delhi Branch Mr Sanjay Shukla welcomed the National President Shri H K Sharma, Co-

Chairman BOS Shri T G Nandakumar and the students. National President briefed the national level activities of IIMM. Co-Chairman BOS explained about the courses and the educational activities of the institute. All present introduced themselves after which there was an active interaction among students and IIMM officials.



L to R – Mr. TG Nandakumar, Co-Chairman, BOS, Mr. H K Sharma, National President, presenting a bouquet Mr. Sanjay Shukla Chairman & Mr. Sanjeev Kr. Bhatia, Treasurer, Delhi Branch



R to L – Mr. Sanjay Shukla Chairman, Mr. Sanjeev Kr. Bhatia, Treasurer presenting a bouquet to Mr. TG Nandakumar, Co-Chairman, BOS, Mr. H K Sharma, National President.



Group Photo

EXECUTIVE HEALTH

HOW TO LIVE A HEALTHIER LIFESTYLE

Paige Waehner is a certified personal trainer, author of the “Guide to Become a Personal Trainer”; and co-author of “The Buzz on Exercise & Fitness.”

The phrase ‘healthy lifestyle’ is an abbreviated definition of what it looks like to live a vibrant, active life with a healthy body and healthy mind. Creating a healthy lifestyle doesn’t have to mean drastic changes. Making gradual small changes to your daily routine can have a big impact.

What Is a Healthy Lifestyle?

You know the obvious behaviors that describe someone who is healthy and takes care of themselves. A healthy person doesn’t smoke, tries to maintain a healthy weight, eats healthy foods with plenty of fruits, vegetables and fiber and, of course, exercises on a regular basis.

Then there are other elements to add to the list. A healthy person also knows how to manage stress, gets good quality sleep each night, doesn’t drink too much, doesn’t sit too much—basically, does everything in moderation all the time. When you look at everything that could possibly go into a healthy lifestyle, you can see just how hard all of those things are in our current world.

The good news is, you don’t have to change everything at the same time. In fact, the trick to healthy living is making small changes—taking more steps each day,¹ adding fruit to your cereal, having an extra glass of water, or saying no to that second helping of buttery mashed potatoes. One thing you can do right now to make your lifestyle healthier is to move more.

Benefits of Physical Activity

You know you need to exercise, but there are many excuses not to do it. You’re too busy, don’t know where to start, you’re not motivated or you’re afraid you’ll injure yourself. Maybe you think exercise has to be really hard or it isn’t good enough.

It’s great if you can spend time exercising—meaning you’re sweating, working in your target heart rate zone, or doing something to strengthen your body. But it doesn’t always have to be that way. Moderate

activities like chores, gardening and walking can make a difference.

Whatever definition you have about what exercise is or isn’t, the bottom line is that exercise is movement. Whether it’s walking around the block or running a marathon, that movement is exercise and every time you move more than you normally do, it counts.

Healthy Weight Loss or Maintenance

Even if you opt for small changes, the benefits are still pretty amazing. For example, increasing your activity level can help you to reach and maintain a healthy weight. If you are currently overweight, small steps toward that goal can have an impact.

The Centers for Disease Control and Prevention notes that if you are overweight, reduction of 5 to 10% of your total body weight can help lower blood pressure, cholesterol, and blood sugar.

In fact, you don’t even have to have a goal to lose weight, especially if you have trouble sticking to a program. Why not focus on being healthy to start and not worry about the weight loss because as you move more, you may find that you start losing some additional weight too.

Other Benefits

The great thing about moving is that just a few minutes a day can have other lasting benefits, many of which you may not even be aware of. Just some of the benefits include:²

- Enhances self-esteem
- Helps maintain flexibility as you age
- Improves joint stability
- Improves memory in elderly people
- Improves mood and reduce symptoms of anxiety and depression
- Increases and improves range of motion
- Maintains bone mass
- Prevents osteoporosis and fractures
- Reduces stress
- Reduces the risk of heart disease, stroke, and diabetes

How to Increase Physical Activity

You can start the process of being healthy now by adding a little more activity to your life. If you're not ready for a structured program, start small.³

Reduce Screen Time

Schedule time when you turn off the TV and computer. Once a week, turn off all screens and do something a little more physical with your family. Play games, take a walk, do almost anything that will be more active than sitting on the couch. This can also serve as good quality time with the family.

Taking Fun Walks With Your Kids

Increase Daily Steps

Look for small ways to walk more. When you get the mail, take a walk around the block, take the dog for an extra outing each day, or walk on your treadmill for five minutes before getting ready for work. When you're on the phone, pace around or even do some cleaning while gabbing. This is a great way to stay moving while doing something you enjoy.

30 Easy Ways to Walk 2,000 More Steps a Day

Do Some Chores

Get housework done and increase daily movement at the same time. Shoveling snow, working in the garden, raking leaves, sweeping the floor—these kinds of activities may not be vigorous exercise, but they can keep you moving while getting your house in order.

How to Burn More Calories Doing Chores

Increase Awareness

Make a list of all the physical activities you do on a typical day. If you find that the bulk of your time is spent sitting, make another list of all the ways you could move more—getting up each hour to stretch or walk, walk the stairs at work, etc.

Injury Prevention

How to Maintain a Healthy Diet

Eating a healthy diet is another part of a healthy lifestyle. Not only can a nutritious diet help with weight management, but it can also improve your health and quality of life as you get older.

You already know about the food groups and the fact that it is recommended that you eat more fruits and vegetables and fewer processed foods. You probably have a list of things you know you should do for a healthier diet but, again, making too many changes

at once can backfire. Going on a restrictive diet may make you crave the very foods you're trying to avoid.

Another approach is to look for ways to make smaller changes each day. Just a few ideas for changing how you eat include:

- **Cut back on sugary beverages.** It's easy to consume excess sugar and calories in the beverages that you drink. Sugary sodas, sweetened teas, juice drinks, and high-calorie coffee drinks can easily eat up your daily recommended allowance of added sugars. Consider drinking plain water or water flavored with fresh fruit or herbs. It's a great way to stay hydrated and still get a burst of flavor.
- **Eat low-fat or fat-free dairy.** Switching to skim milk or fat-free yogurt is another simple way to eat fewer calories without having to change too much in your diet.
- **Eat more fruit.** Add it to your cereal, salads, dinners, or make it a dessert. The fruit is also a great snack after work or school to keep you going for dinner.
- **Make some substitutions.** Look through your cabinets or fridge and pick three foods you eat every day. Write down the nutritional content and, the next time you're at the grocery store, find lower-calorie substitutes for just those three items.
- **Sneak in more veggies.** Add them wherever you can—a tomato on your sandwich, peppers on your pizza, or extra veggies in your pasta sauce. Keep pre-cut, canned, or frozen veggies ready for quick snacks.
- **Try a healthy salad dressing.** If you eat full-fat dressing, switch to something lighter and you'll automatically eat fewer calories. You can also put the dressing on the side and dip, or even try making your own dressing.

A Word From Verywell

Creating a healthy lifestyle doesn't have to mean drastic changes. You may adapt to change better when it doesn't require you to overhaul your entire life. Just pick one thing and work on that one thing every day, letting the rest of your life and habits stay the same. You may be surprised that those small changes really can make a difference.

Source: www.verywellfit.com



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7093802468/09010556099V U NAGAR 09825028050

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