



HIMACHAL PRADESH POWER CORPORATION LIMITED

(A State Government Undertaking)

Himfed Building, BCS, New Shimla, Himachal Pradesh-171009.

Website: www.hppcl.gov.in CIN:U40101HP2006SGC030591

"Office Order"

Whereas, the Himachal Pradesh Power Sector Development Program (HPPSDP) is being funded by the World Bank and the objective of this programme is to increase renewable energy penetration and strengthen the power sector institutions in Himachal Pradesh through various Result Areas (RAs).

The **Procurement Manual for (Works), 2025 of HPPCL** have been prepared after considering the suggestions made by the World Bank under "*Himachal Pradesh Power Sector Development Program*", various functionaries and also considering latest procurement guidelines/manuals in identical utilities of the state and Centre Governments. Therefore, the Procurement Manual for (Works) is implemented henceforth for adoption in HPPCL.

The document shall be used, keeping in view the "Concept, Intent & Purpose of Financial Propriety" provided in Section-2.

In case of any conflict between the provisions stipulated in this manual and in HP Financial Rules or the prevailing laws, the provisions contained in the extant law shall prevail.

This is issued with the approval of the Competent Authority.


General Manager (Civil Contracts)

No. HPPCL/CCPC/Tender/ Misc./Proc. Manual/2025- **452-72** Dated: **23/08/25**

Copy of the office order along with Procurement Manual for (Works), 2025 of HPPCL is forwarded to the following:

1. The Managing Director, H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for kind information please.
2. The Director (Personnel)/ Director (Finance) / Director (Electrical) / Director (Civil) H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for kind information please.
3. The General Manager (Generation)/ General Manager (Corporate Planning & Monitoring), General Manager (Civil Contracts)/ General Manager (Elect. Contracts)/ General Manager (RE) H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for information and necessary action please.
4. The General Manager (Designs) H.P.P.C.L., Sundernagar, HP for information and necessary action please.
5. All the Head of Project(s) for information and necessary action please.
6. The Chief Environment-cum-R&R Specialist, H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for information and necessary action please.

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PROCUREMENT MANUAL

For

Works



Himachal Pradesh Power Corporation Limited

(A State Government Undertaking)

Regd. Office:

**Himfed Building, BCS, New Shimla, Himachal Pradesh-
171009**

Website: www.hppcl.in

2025

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SECTION-1

Procurement Glossary

Procurement Glossary

1. “Bid” (including the term ‘tender’, ‘offer’, ‘quotation’ or ‘proposal’ in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers;
2. “Bidder” (including the term ‘tenderer’, ‘consultant’ or ‘service provider’ in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons, or firms or companies), participating in a procurement process with a Procuring Entity;
3. “Bid(ding) documents” (including the term ‘tender (enquiry) documents’ or ‘Request for Proposal Documents’ – RFP documents in certain contexts) means a document issued by the Procuring Entity, including any amendment thereto, that sets out the terms and conditions of the given procurement and includes the invitation to bid.
4. “Bid security” (including the term ‘Earnest Money Deposit’(EMD), in certain contexts) means a security from a bidder securing obligations resulting from a prospective contract award with the intention to avoid: the withdrawal or modification of an offer within the validity of the bid, after the deadline for submission of such documents; failure to sign the contract or failure to provide the required security for the performance of the contract after an offer has been accepted; or failure to comply with any other condition precedent to signing the contract specified in the solicitation documents.;
5. “Competent authority” means the officer(s) who finally approves the decision.
6. “Consultancy services” means a one-off (that is, not repetitive and not routine) services, involving project specific intellectual and procedural processes using established technologies and methodologies but the outcomes – which are primarily of non-physical nature – may not be standardised and would vary from one consultant to another. It may include small works or supply of goods which are incidental or consequential to such services;
7. “Goods” includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, vehicles, , sub-assemblies, accessories, a group of machines comprising an integrated production process or such other categories of goods or intangible, products like technology transfer, licenses, patents or other intellectual properties, procured or otherwise acquired by a Procuring Entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance;
8. “Indenter” (or the term ‘User (Department)’ in certain contexts) means the entity and its officials initiating a procurement indent, that is, a request to the Procuring Entity to procure goods, works or services specified therein;
9. “Inventory” means any material, component or product that is held for use at a later time;
10. “Non-consultancy services” includes services of physical and procedural nature and are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied such as drilling, aerial photography, satellite imagery, mapping and similar operations. It may include small works or supply of goods which are incidental or consequential to such services;

11. “Notice inviting tenders” (including the term ‘Invitation to bid’ or ‘request for proposals’ in certain contexts) means a document and any amendment thereto published or notified by the Procuring Entity, which informs the potential bidders that it intends to procure goods, services and/or works;
12. “Procurement” (or ‘Purchase’, in certain contexts) means acquisition by way of purchase, lease, license or otherwise, either using public funds or any other source of funds (e.g. grant, loans, gifts, private investment etc.) of goods, works or services or any combination thereof, including award of Public Private Partnership projects, by a Procuring Entity, whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition of goods, works or services without consideration, and the term “procure” or “procured” shall be construed accordingly;
13. “Procurement contract” (including the terms ‘Purchase Order’ or ‘Supply Order’ or ‘Withdrawal Order’ or ‘Work Order’ or ‘Consultancy Contract’ or ‘Contract for Services’ under certain contexts), means a formal legal agreement in writing relating to the subject matter of procurement, entered into between the Procuring Entity and the supplier, service provider or contractor on mutually acceptable terms and conditions and which are in compliance with all the relevant provisions of the laws of the country. The term “contract” will also include “rate contract” and “framework contract”;
14. “Procurement process” means the process of procurement extending from the assessment of need; issue of invitation to pre-qualify or to register or to bid, as the case may be; the award of the procurement contract; execution of contract till closure of the contract;
15. “Procuring authority” means the officer who finally approves as well as those officials and committee members who submit the notes/reports for the approval for any decision;
16. “Procuring Entity” means Procurement Cells to which powers of procurement have been delegated;
17. “Prospective bidder” means anyone likely or desirous to be a bidder;
18. “Service” means any subject matter of procurement other than goods or works, except those incidental or consequential to the service, and includes physical, maintenance, professional, intellectual, training, consultancy and advisory services or any other service classified or declared as such by a Procuring Entity;
19. “Subject matter of procurement” means any item of procurement whether in the form of goods, services or works or a combination thereof;
20. “Employer” (including the term ‘purchaser’, in certain contexts) shall have the same meaning and these words relates to HPPCL in the procurement process;
21. Contractor (including the term ‘supplier’, in certain contexts) shall have the same meaning in the procurement process.

Abbreviations and Acronyms

AMC	Annual Maintenance Contract
BC	Bill Currency (selling/buying)
BG	Bank Guarantee
BIS	Bureau of Indian Standards
BOC	Bid Opening Committee
CA	Competent Authority
CFR	Cost and Freight
CIF	Cost Insurance and Freight
CIP	Carriage and Insurance Paid
DGS&D	Directorate General of Supplies and Disposals
EMD	Earnest Money Deposit
EoI	Expression of Interest (Tender)
ERV	Exchange Rate Variation
FAS	Free Alongside Ship
FM	Force Majeure
FOB	Free On Board
FOR	Free On Rail
FOT	Free On Truck
GCC	General Conditions of Contract
GFR	General and Financial Rules, 2017
GTC	General Terms & Conditions
GTE	Global Tender Enquiry
INCOTERMS	International Commercial Terms
ISI	Indian Standards Institute
ISO	International Organization for Standardization
ITB	Instructions to Bidders
ITJ	Indian Trade Journal
L1	Lowest Bidder
LC	Letter of Credit
LD	Liquidated Damages
LoA	Letter (Notification) of Award also called Acceptance of Tender (A/T)
LTE	Limited Tender Enquiry
NIT	Notice Inviting Tender
OEM	Original Equipment Manufacturer
OTE	Open Tender Enquiry
PAC	Proprietary Article Certificate
PBG	Performance Bank Guarantee,
PQC	Pre-qualification Criterion
PR	Purchase Requisition/Indent
PVC	Price Variation Clause
QA	Quality Assurance

QCBS	Quality cum Cost Based Selection
RBI	Reserve Bank of India
RfP	Request for Proposals
RTI	Right to Information
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SD	Security Deposit
SLA	Service Level Agreement
SLTE	Special Limited Tender
SPCB	State Pollution Control Board
STC	Special Terms & Conditions
STE	Single Tender Enquiry
TC	Tender Committee also called Tender Purchase or Evaluation Committee (TPC/TEC)
ToR	Terms of Reference
TS	Technical Specification
UCP 600	The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP)
UNCITRAL	United Nations Commission on International Trade Law
URDG 758	Uniform Rules for Demand Guarantees

SECTION-2

Concept, Intent & Purpose

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Concept, Intent & Purpose

1. Procurement Rules and Regulations; and this Manual

In accordance with the Delegation of power, HPPCL, has the authority to make their own arrangement for procurement of Works. These powers are to be exercised as per the Delegation of Financial Power Rules, Schedule of Procurement Powers, and in conformity with the 'Procurement Guidelines' given below.

There are Government guidelines which provide framework for the public procurement system, to ensure that procurements by every department are made in a uniform, systematic, efficient, and cost- effective procedure. In case of conflict between manual and government order/circulars/notification, the latter shall prevail.

There is no law exclusively governing public procurement. The Indian Contract Act, 1872, the Arbitration and Conciliation Act, 1996, and the Sale of Goods Act, 1930 are major legislations governing contracts for procurement in general. There are other mercantile laws (Information Technology Act, 2000 etc.), which may be attracted in Public Procurement Transactions.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, and notifications released by GoHP regarding procurement guidelines especially chapter 6; Delegation of Financial Powers Rules (DFPR); Procurement rules specific for Himachal Pradesh are available in the Himachal Pradesh Financial Rules, 2009, especially chapter 6; Procurement of goods and services.

This Procurement Manual intends to serve as a tool kit containing explanation of basic norms and practices governing public procurement of, works, for value for money, economy, integrity, fit for purpose, efficiency, transparency and fairness.

2. Legislations:

Article 299 of the Indian Constitution provides the statutory basis for public procurement. It states that contracts that are legally binding on the government must be performed in writing by authorities who are properly authorized to do so.

Additionally, the Constitution upholds Fundamental Rights, which have an impact on public procurement. These include Article 14's right to equality before the law and Article 19(1)(g)'s right to pursue a profession. Furthermore, two important pieces of legislation that generally govern contracts for procurement (both private and public) are the Indian Contract Act, 1872, and the Arbitration and Conciliation Act, 1996 (as revised in 2015). The Central Vigilance Commission (CVC) has also released rules on governance matters that also apply to public procurement. Public procurement is not specifically governed by any one statute.

The Public Procurement (Preference to Make in India) Order of 2017, the General Financial Rules (GFR), 2017, the Delegation of Financial Powers Rules (DFPR), and the guidelines released by the Central Vigilance Commission to improve objectivity and transparency in public procurement, however, contain comprehensive rules and regulations in this regard. This Manual aims to act as a guide for the procurement of Civil works in HPPCL, without claiming to be an exhaustive compilation of all such "Procurement Guidelines."

3. Essential Guidelines for Public Procurement:

In addition to the fundamental objectives of procurement, procuring authorities' responsibilities can be categorized into the following five core public procurement principles, each of which they are required to adhere to and hold accountable. The following principles apply:

- i) Transparency;
- ii) Professionalism;
- iii) Broader obligations;
- iv) Extended legal principles; and
- v) Public responsibility.

4. Standards (Canons) of Financial Propriety:

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

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

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

5. Applicability of this Manual

This manual is applicable to procurement of Works defined as “any activity, sufficient in itself to fulfil an economic or technical function, involving construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, and so on, which make use of a combination of one or more of engineering design, architectural design, material and technology, labour, machinery and equipment. The term “Works” includes (i) civil works for the purposes of construction of Hydro Projects, Building(s), roads, bridges, irrigation systems, water supply, sewerage facilities, drainage, dams, tunnels and earthworks;

and so on, and (ii) mechanical and electrical works involving fabrication, installation, erection, repair and maintenance of a mechanical or electrical nature relating to machinery and plants”.

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

The rights and obligations of the Employer/ purchaser and the contractor of works will be governed by the tender documents and by the contracts signed by the Employer/ purchaser with the contractor and not by the guidelines stated in this document.

6. Proactive Information Disclosure

The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo moto disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated April 15, 2012. The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

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

7. Procurement Policy, Plan and Strategy

Procurement Policy

The aim of procurement is to obtain right quality of works, at reasonable and competitive prices, giving equal opportunities to all individuals, companies, firms, manufacturers, contractors, who are capable of delivering the, works and services to the laid down specifications, standards and provisions of bid documents. Procurement policy is also to provide incentive and encouragement for development of national manufacturers, contractors, firms, and institutions etc. The procurement policy is based on below noted principles:

- i) Transparency:** Symmetric and unrestricted dissemination of information to all likely bidders, for them to understand the processes and time-limits provided for registration, bidding, evaluation, grievance redressal and award of contracts. It implies openness and equal opportunities in the bidding process. Procuring authority should also publish all relevant procurement information on Govt.’s procurement portal. To unlock efficiencies and elevate procurement process to par with global level, procuring authorities should adopt digital enablers and establish a centralized procurement platform.

- ii) **Economy & Efficiency:** This includes meeting the essential requirements of procurement, excluding non-essential features, to minimize unwarranted expenditure. Procuring authority should avoid purchasing quantities more than requirement to avoid inventory costs. Price should be reasonable for the quality procured. The HPPCL shall prepare and publish procurement plan as a dynamic document announcing various tenders to be launched in next 12 months or so. This will serve as advance information for the bidding community. Furthermore, to promote healthy competition, no brand/make affiliations for a specific manufacturer shall be used within the bidding document. The HPPCL may follow brand neutral specifications and limit the description of the items to ISI specifications. However, in order to ensure the quality of the products, an equivalency of brand can be mentioned in the nomenclature of respective items for assessment of product quality.
- iii) **Social Objectives:** In addition to transparency and economy, the procuring authority should ensure achievement of government's overall objectives like preferential procurement from backward regions, weaker sections and MSEs; and facilitating broader social policy and programmes of GoI like Make-in-India, Ease of doing business, etc.
- iv) **Environment Sustainability:** This includes meeting the essential requirement by prioritizing using eco-friendly materials in the projects, considering their environmental impact over their lifespan, including recycled content, low-carbon options, and certified wood. To actively seek environment friendly alternatives and partner with suppliers offering innovative sustainable solutions and committed to minimizing waste generation throughout project lifecycles. Encourage the use of reusable, recyclable, and eco- friendly packaging and materials and sharing best practices and knowledge with suppliers, providing them with resources and support to implement sustainable solutions.
- v) **Public Accountability:** As per the GFR, procuring authority should place on record at each stage of procurement the decisions from need assessment to fulfilment of need. This information should be available to oversight agencies and should contain all documents pertaining to procurement proceedings.
- vi) **Data Privacy:** HPPCL will have the ownership of the reports/ deliverables produced by the consultant(s)/ Contractor(s) under the contract, which shall not be published or put in public domain without the approval of HPPCL. Consultants/ contractors that may be responsible for storage or processing of sensitive data shall take in into consideration 'The Digital Personal Data Protection Bill, 2022', 'The Information Technology Act, 2000' and 'Indian Contract Act, 1872'.
- vii) **Procurement Plan:** Procurement Plan shall include description of contracts for the works and for services required to carry out under the project, consistent with project principles, there technical and administrative approved estimates and proposed methods for procurement over the total agreed implementation period under loan/ credit agreement. The procurement shall be consistent with budgetary allocations.
The Procurement Plan shall be updated annually or as needed throughout the duration of the project. The Procurement Plan is critical for:
Ensuring satisfactory implementation of project.
Ensuring speedy transfer of resources by way of disbursement.

Achieving economy and efficiency; and
Ensuring success of the project.

A sound procurement plan and public procurement is a vital arm for promoting good governance and better fiscal management of the project.

Under Procurement Plan, works, and services to be procured are identified year-wise over the implementation period. The HPPCL will prepare the Procurement Plan for works, and services and showing therein the name of the works, date of inviting tender, technical bid opening date, financial bid opening date, method of procurement separately for each category of procurement. The procurement plan shall be prepared as per the prescribed/ Standard format.

The Procurement Plan for the Bank funded program shall be furnished to the Bank for its review and approval. The Procurement Plan and method of procurement and categories of works to which they apply are specified in loan/ credit agreement which shall govern the legal relationship between the Bank and Borrower (GoHP).

8. Public Procurement Cycle

Broad activities that are undertaken for the procurement process for works, and services is given below:

- i) Need Assessment:** Need assessment, formulation of Specifications and Procurement Planning
- ii) Bid Invitation:** Preparing bid documents, publication, receipt and opening of bids;
- iii) Bid Evaluation:** Evaluation of bids and award of contract; and
- iv) Contract Execution:** Contract management and closure.

9. Procurement Complaints

For customer user complaint management system, complaints received shall be dealt as per procedure defined in 'Procurement Grievance Redressal Mechanism' available on HPPCL web- portal.

10. Code of Conduct for Public Procurement

- i.** HPPCL, as well as the Bidders, consultants, contractors and suppliers; any sub-contractors, service providers or suppliers; any agents (whether declared or not); and any of their personnel, are committed to observe the highest standard of ethics during the procurement process, selection and contract execution, and refrain from Fraud and Corruption. In pursuant of this policy, HPPCL.
- ii. Corrupt practice:** Any practice that seeks to influence the procurement process or contract execution by making offers, solicitations, or acceptance of bribe, rewards, or gifts.
- iii. Fraudulent practice:** Any misrepresentation or omission or false declaration that may mislead, leading to obtaining of financial or other benefits.
- iv. Anti-competitive practice:** This involves collusion, bid rigging, or anti-competitive arrangement which comes under the purview of the Competition Act 2002, between bidders which may hinder the transparency, fairness, and progress of the procurement process.
- v. Coercive practice:** Any practice that may harm or threaten to harm persons or their property to influence their participation in the procurement process.

- vi. Conflict of interest:** Any practice that may gain the bidder undue advantage in the procurement process, like participation of bidding firm or any of its affiliates that are involved in the consultancy contract to which the procurement is linked, or if the bidding firm or their personnel have any financial or business relationship with any official of the procuring entity.

Collusive practice: Any arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

Obstructive practice: Any practice of impeding the procuring entity's investigation into allegations of above-mentioned practices by destroying, falsifying, concealing of evidence material, or by threatening, harassing, or making false statement to investigators.

11. Obligations for Proactive Disclosures

- i. Code of Conduct for Public Procurement makes it obligatory for the procuring authorities as well as bidders, suppliers, and contractors to proactively declare any conflicts of interest in the procurement process or execution of contract.
- ii. The contractor is obligated to procure as per scope of work initially agreed upon by all parties.
- iii. Whether mentioned in the contract or not, bidders must disclose any previous violation of such code of conduct with any entity during the last three years or of being debarred by any other procuring entity.
- iv. Voluntary disclosures are encouraged by avoiding automatic disqualification for the bidder making such declaration. The disclosure may be evaluated and mitigation steps if possible, may be taken by the procuring entity.

12. Punitive Provisions

In response to violation of code of conduct by a bidder/supplier in procurement process or execution of the contract, following measures might be taken by the procuring entity:

- i. If bids are under consideration in any procurement
 - a. Future forfeiture on the basis of bid security declaration or encashment of bid security
 - b. Calling off any pre-contract negotiations
 - c. Rejection and exclusion of bidder from procurement process
- ii. If contract has already been awarded
 - a. Cancellation of contract and recovery of compensation for loss
 - b. Forfeiture or encashment of any other security
 - c. Recovery of payments including advance payments
- iii. Provisions in addition to above:
 - a. Removal from the list of registered Contractor/suppliers, if any and debarment of bidder from future procurements of the procuring entity for minimum period of one year.
 - b. Initiation of suitable disciplinary or criminal proceedings against any procuring officer or staff found responsible;

13. Integrity Pact (IP)

This is a pre-bid pact to help government, HPPCL, businesses, and civil society to fight corruption in public contracting. “The pact essentially envisages an agreement between the prospective contractor/vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those contractor/vendors/ bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process.” In other words, this pact would be a preliminary qualification for the bidders.

The bid documents should contain clause and format pertaining to the Integrity Pact and each page of such proforma should be duly signed by the competent signatory of HPPCL. All pages of the IP should be signed by the signatory who is duly authorized to sign and make binding commitments on company's behalf.

14. Debarment Policy

Debarring/Blacklisting: The contractors/firms dealing with HPPCL may be debarred/ blacklisted, if it is considered not desirable to continue the business with it. The action taken by the Competent Authority/ WTD/ BOD in pursuant to this policy prohibits contractors/firms from directly or indirectly performing any work for or otherwise participating in HPPCL bid/ tender including to prohibit agency from submitting a bid, having a bid considered, or entering any work/ contract during a specified period as set for the debarment/ blacklisting order.

The guidelines/debarment policy of HPPCL for debarring/blacklisting of contractors/firms is as under:

- i. Firms may be debarred for actions other than violation of integrity pact, like supply of sub- standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration”, Non/ Poor Performance of Work etc.
- ii. Firms will be debarred if found in breach of the code of integrity as per Rule 175 of GFRs 2017
- iii. HPPCL will ensure that reasonable opportunity has been given to the concerned contractor/ firm to represent against such debarment.
- iv. The Tender award approving authority shall be the competent authority to debar the firms. The debarment shall be on the basis of recommendations of committee constituted in this regard by the Managing Director.
- v. Order for revocation of debarment can also be issued before the period of debarment is over, if there is adequate justification for the same, by the competent authority/ MD in accordance with the recommendation of committee. The committee for recommendation of debarment and revocation of debarment of contractor/ firm shall be same.
- vi. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding five years.

Credibility of non-debarment by the Agency: The contractor should submit an undertaking on the proforma attached with terms and conditions to the effect that he/she has not been blacklisted/debarred by any agency/department for participation in tendering on the last date of submission of tender.

15. Initiation of the Penal Actions against the Non-Performing Agency

HPPCL shall be liable for the penal actions in addition to the general conditions of individual contracts for the non-performance in works or supply and for the minor lapses / misconducts from the agency during execution of contracts.

a. Penalties:

Contractor/firms may be liable under these provisions to one or more of the following penalties: Warning / Fine, Banning / De-registration, Suspension of Registration pending inquiry, and Debarring/ Blacklisting

b. Warning /Fine

Contractor/firms will be liable to a warning and / or fine for

- (i)** Non-compliance of any provisions of this policy, or failure to comply with any condition of tenders / contracts and
- (ii)** Inadequate progress / performance under a contractor quality in such works,
- (iii)** If doesn't complete the work within the stipulated time and duration as per the agreement,
- (iv)** If doesn't follow the General Conditions of the Contract,
- (v)** Deterioration in financial or technical ability / capacity and
- (vi)** Repeated failure to properly fill in tender documents, fully and correctly or delay in execution of formal contract documents, For each subsequent default of the types mentioned as above, the minimum penalty / fine will be imposed by the HPPCL, the amount of fine may be levied as decided by the MD and the reasons to be recorded.

c. Banning/Deregistration

Banning/ Deregistration will be for a specific period or permanent banning /Deregistration. Contractor/firm is liable to be Banned / De-registered on one or more of the following grounds:

- (i)** If security considerations including question of loyalty to the HPPCL so warrant,
- (ii)** If the proprietor of the firm, its employee, partner or representative is convicted by a court of law following of investigation or under normal process of law for offences involving moral turpitude in relation to business dealings viz. Conviction by court of law,
- (iii)** If there is strong justification for believing that the proprietor or employee, or representative of the firm has been guilty of malpractices such as bribery, corruption, fraud substitution of tenders, interpolation, misrepresentation, evasion or habitual default in payment of any tax levied by law.
- (iv)** If the firm continuously refuses to return HPPCL's dues without showing adequate cause, and HPPCL is satisfied that this is not due to a reasonable dispute which would attract proceedings in arbitration or court of law,
- (v)** If the firm employs HPPCL or State Govt. servant, dismissed/removed on account of corruption, or employs a non-official convicted for an offence involving corruption or abetment of such an offence, in a position where he could corrupt Govt. Servants.
- (vi)** Persistent and intentional violation of important conditions of contract. Not attaining required quality of work and non-execution of works as per

terms and conditions of contract. Constant non achievement of milestone on insufficient and imaginary grounds and non-adherence to quality specifications despite being pointed out,

- (vii) An attempt to cheat HPPCL, an attempt to secure a contract through unfair means or bringing to bear outside influence, an attempt to secure unauthorized copies of HPPCL records and documents in relation to any tender / contract or any other official matter, an attempt to tamper with HPPCL record and documents, threatening, misbehaving with or physical attack on any HPPCL employee/ Officer,
- (viii) An attempt to instigate or collude with other contractor/firm with a view to securing undue advantage,
- (ix) Show Cause notice shall be issued separately or along with termination to the contractor/firm, by the competent authority, calling for the explanation on the alleged lapses by him and the registration of Agency/s may be banned or initiate the process for suspension up to the arrival of final outcome.
- (x) Defines corrupt practice/ fraudulent practice/ collusive practice/ coercive practice/ obstructive practice, the same as in the Code of Conduct for Public Procurement
- (xi) Will reject a proposal for award if it determines that the bidder recommended for award, any of its personnel, or its agents, sub-contractors, service providers, suppliers and or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question; and
- (xii) Will sanction Bidder, either indefinitely or for a stated period, to be awarded a contract if it at any time determines that the Bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing a contract.

d. Suspension of Registration pending enquiry:

- (i) Whenever any show cause notice is issued to the contractor/firm calling for the explanation on the alleged lapses by him, the registration of contractor/firm may be banned / suspended up to the arrival of final outcome of the said show cause notice, depending on the seriousness of the reasons for which Show Cause Notice is issued.
- (ii) Show cause notice shall be issued by the competent authority i.e., to ban / suspend the registration pending inquiry in such cases.
- (iii) The final decision of Banning / suspension of registration till further orders, shall be circulated to all Project office(s) of HPPCL.
- (iv) The registration of the contractor/s will be restored/ revoked depending on the final outcome of the process of the said Show cause Notice and circular to that effect shall be issued by Concerned Competent Authority HPPCL.

e. Procedure/Applicability for Penal Action

- (i) Before initiating action for Warning /Fine / banning / suspension / de-registration, the Engineer-in-Charge for the concerned work/project of HPPCL, shall issue a show cause notice to the contractor/firm, as to why penal action should not be taken against the said contractor/firm. The

notice period shall not be less than 14 days and shall be counted from the date of receipt of the notice by HPPCL and can be extended, for adequate reasons (to be recorded), by the officer who issued the said notice, up to a period of 30 days (Including the initial period).

- (ii) If the contractor/firm fails to give satisfactory clarification within the period stipulated in the show cause notice (or, the extended period, if any), the Authority shall take a decision regarding specific time period and make detailed report with recommendation for penal actions to competent authority.
- (iii) The competent authority shall give personal hearing to contractor/firm or his/their authorized representative on his request in writing along with his/their letter of clarification, before taking final decision on banning / de-registration of the contractor/firm with specific time or permanently. As far as practicable, the competent authority, shall take final decision regarding banning / de-registration within 15 days of completion of the hearing.
- (iv) The decision regarding banning / de-registration shall be communicated to contractor/firm immediately with directions to submit the original registration /vendor approval letter / certificates to the Competent Authority within 15 days from the date of receipt of the order for taking necessary endorsement on the same. If any contractor/firm does not comply with this requirement within the period of 15 days mentioned above, He / they shall be deemed to have been de-registered automatically at the expiry of the above-mentioned period.

f. Grounds for Debarring / Blacklisting

Debarring/Blacklisting from business dealings can be initiated against the Agency if involved or committed any of the following misconduct/ irregularities:

- (i) The Directors, Proprietors, Partners, Employee(s) or owner of the contractor/firm have been either jointly or severally guilty of malpractices such as fraud including but not limited to submission of fake or forged documents/ certificates/ guarantees, substitution of tenders, etc. in relation to its business dealings with the HPPCL, during the last five years.
- (ii) The contractor/firm who deals with HPPCL if debarred/ blacklisted by any State/ Central PWD & HPPCL as well as, PSU's/ Autonomous bodies of Central & State Govt. and still in force.
- (iii) The contractor/firm is found to have been in default in paying any dues resulting in incurring financial loss to the HPPCL by virtue of an order and or direction of any statutory authority or Court or Arbitration, etc. for making such payment in respect of the agency concerned.
- (iv) The contractor/firm is repeatedly found to be nonperforming in execution of 1 (one) or more terminated or partial terminated contracts and/ or in rectification of critical/major defects as pointed out by the authorized representative of HPPCL, in last 5 (five) years.
- (v) Penal Actions as mentioned above, if repeated by contractor/firm one time or more, then it shall be liable for debarring/blacklisting.
- (vi) Competent Authority is expected to proceed with due care and responsibility before Debarring/blacklisting any bidders/contractors/ vendors as it is a drastic step to be taken against the Firm / Person. The

grounds given above are only illustrative and not exhaustive. The Competent Authority may decide to debar /blacklist an Agency according to the seriousness of the ground.

- (vii) The competent authority shall decide depending upon the level of severity in defaults from the agency, the period of debarring/blacklisting i.e permanent or a specific period. In case of major lapses and a criminal or fraudulent type of issues involved therein, the First Information Report (FIR) to Police Department shall be lodged.
- (viii) If any one or more Partner/ Directors of any debarred / blacklisted Agency/firm promotes or forms a new contracting firm or a sister-concern firm of the said debarred/blacklisted Agency/firm, then it shall also be considered as a debarred /blacklisted firm.

g. Competent Authority (CA) for Debarment / Blacklisting

Considering the above-mentioned grounds, Debarring /Blacklisting from business dealings can be initiated against the contractor/firm, after due scrutiny by the Engineer-in-charge concerned/ selected. He shall serve upon the 'Show cause Notice' for Debarring /Blacklisting of the contractor/firm. For debarment /Blacklisting, the Competent Authority (CA)/ MD or WTD/ BOD (as the case may be) for debarring/Blacklisting of business dealings with the accused contractor/firm shall be authorized.

h. Powers of Competent Authority

- (i) To investigate the matter in connection with the allegation of corrupt, fraudulent, coercive or collusive practices or illegal practice of agencies.
- (ii) To ensure timely and expeditious disposal of proceedings of debarment/blacklisting.
- (iii) Seek advice or opinion on specific issues.

i. Procedure

The LOA Issuing Authority of the concerned Project/ HPPCL on noticing any misconduct and/or irregularities as mentioned above, shall serve upon the 'Show cause Notice for Debarring/Blacklisting' during termination or closing of contract(s) stating therein the facts/ reasons containing the allegation of misconduct or irregularities and the period of 14 days to be afforded to the contractor/agency to present their statement/ submission in the form of reply in response to Show cause Notice. In the event, non-receipt of reply from the agency within the stipulated period, action as proposed will be proceeded with and no representation/submissions thereafter will be accepted. In each case, copy of service return of notice be kept and a confirmatory document through electronic mode is sine qua non.

- (i) The LOA Issuing Authority shall submit the duly recommended detailed proposal of debarring/Blacklisting of contractor/firm to the Competent Authority (CA) along with show cause notice and reply, if any and parawise justification to the reply to the Show cause Notice submitted by the Agency, if any for consideration and order.
- (ii) The Competent Authority (CA) shall scrutinize the proposal and depending on merit of the case and after examining the material on record shall decide to proceed for enquiry or to close the case. In the event of exoneration of the Agency from debarring/blacklisting, the decision shall be conveyed to LOA issuing authority and subsequently it shall be informed to Agency.

- (iii) If the Competent Authority (CA) arrives at the decision to proceed in the matter then the complete case (if required) shall be handed over to the Enquiring Committee (EC) on case to case basis. The Enquiring Committee shall in detail examine the materials on record, conduct the hearing and decide the case as per the principle of natural justice. During the process of hearing, only the authorized representative of contractor/firm will be permitted to represent the contractor/firm and no Legal practitioner / Advocate shall be allowed to plead the case on its behalf.
- (iv) The competent authority can take appropriate decision on the proposal even without forming Enquiry Committee (EC).
- (v) The decision of the Competent Authority (CA) shall be in the form of reasoned order, the period for which the debar/ blacklist would be operative shall be mentioned in the order and the same shall be communicated to the LOA issuing authority.
- (vi) The LOA Issuing Authority shall then communicate the decision of debarring/blacklisting of business dealings along with the order of Competent Authority (CA) to the contractor/firm.
- (vii) The procedure for debarring/blacklisting shall be completed within a period of 90 (Ninety Days) from initiation of case by concerned authority. The reasoned order shall be communicated to the agency at its recorded address available with HPPCL within 15 days of order issued by registered post. In addition to it, the copy shall preferably be sent on the registered email address of the concerned contractor/firm.
In case of, debarring /blacklisting of Agency, the order shall also specify the name(s) of the proprietor/ partner(s)/ directors/ power of attorney holder of the contractor/s firm/ partnership/ company as well as the period of Debarring/blacklisting in his/their order, and shall intimate the contractor/s accordingly.

j. Period of Debarment / Blacklisting

The period for which a contractor/firm is debarred/ Blacklisted shall clearly be mentioned in the order. Period of debarment/ Blacklisted of business dealings shall be decided by the Competent Authority in exercise of its power delegated and would depend upon the seriousness of the cause. Debarment/ Blacklisting shall be permanently or for the period specified as per sanction of Competent Authority.

Provided further that in case the information/documents submitted by the agency is found to be false/forged at any point of time, HPPCL shall have a right to recover from the contractor/firm the cost incurred in carrying out physical assessment for establishing veracity of such information/document including a penalty decided by Competent Authority.

k. Consequences of Banning/ Suspension/ De-Registration/ Debarment / Blacklisting

Upon issuance of the order of banning/suspension/deregistration/ debarment/ Blacklisting of a contractor/firm from future business dealings with HPPCL, the banned/suspended/deregistered/debarred/blacklisted contractor/firm along with its Joint Venture Partner Firm shall not be allowed to participate in any future tenders, during the banned/ suspended/deregistered/ debarred/ blacklisted period. Further, in case the contractor/firm has already participated

in the tender process and the price bid is not opened prior to issuance of the order of banned/suspended/ deregistered/ debarment/ blacklisting of business dealings, its Technical Bid and Financial Bid shall be rejected, and not be opened. In the event the Price Bid of the participating contractor/firm has been opened and the contractor/firm against whom the order of banned/ suspended/ deregistered/ debarment/ blacklisting of business dealings has been issued, the bid of the banned/ suspended/ deregistered/ debarred/ blacklisted contractor/ firm shall be rejected even if he is found to be successful bidder, considering the contractor/ firm as disqualified. Provided the order of banned/ suspended/ deregistered/ debarment/ blacklisting of business dealings issued against any contractor/ firm shall not override the rights of the banned/ suspended/ deregistered/ debarred/ blacklisted contractor/ firm already engaged in executing any other contract(s) till its completion.

If registered contractor/firm (a firm partnership or company) is deregistered /banned/suspended/ debarred/blacklisted, then any other registered contractor/firm (a firm, partnership, or company), with any partner or power of attorney holder of the deregistered/banned/suspended contractor/firm, shall also stand automatically deregistered/banned/ suspended/debarred/ blacklisted. Proprietor/ Partner/s Director/s Power of Attorney Holder/s of banned /suspended / deregistered / debarred/blacklisted firm shall not be allowed in Joint ventures.

Debarred contractor/firm (in case of Firms with outside registration) and or agency who are penalized by any other Govt./ Semi Govt. agency such as HPSEBL/HPPCL/HPPTCL/ HPPWD /JSV/CPWD /MES etc. shall not be entitled to be issued any tender documents or BOQ for any HPPCL works during the period of debarring/blacklisting. Further for bids in process, the contractor/firm will not be considered for award of works/contract, even if the said debarred/blacklisted contractor/firms is having registration of any other Govt./ Semi- Govt Agency such as HPSEBL/HPPCL/HPPTCL HPPWD/ JSV /CPWD/ MES etc.

I. Payment Upon Banning/Suspension/Deregistration of Firm

If the contractor/firm is banned/suspended/deregistered for the appropriate reasons because of a fundamental breach of contract by the contractor/firm, Engineer-in-Charge concerned/selected shall issue a certificate for value of the work done and materials ordered. Any excess expenditure incurred or to be incurred by HPPCL in completing the works or part of works or excess loss or damages suffered or may be suffered by the HPPCL due to substandard work shall be recovered from bid security/performance security or balance payment of work being executed by the contractor/firm, and if such securities are not sufficient, the contractor/firm shall be called upon in writing to pay the same within 30 days. if the contractor/firm fails to pay required sum within the aforesaid period of 30 days, the EIC concerned/selected shall have right for recovery by way of encashing the available Performance Guarantee/Bid Security and /or by way of getting work done at risk & cost of contractor/firm in accordance with provision of the contract.

m. Revocation of Suspension / Banning / Deregistration / Debarment / Blacklisting Order

The order for suspension/banning/deregistration/debarment/ blacklisting passed for certain specified period shall be deemed to have been automatically revoked on expiry of the specified period and it will not be necessary to issue a specific formal order of revocation, except that an order of suspension/banning/deregistration/debarment/blacklisting passed on account of doubtful loyalty or security consideration shall continue to remain in force until it is specifically revoked.

An order of suspension/banning/deregistration/debarment/blacklisting for the reasons mentioned at may be revoked if accused has been wholly exonerated by the competent authority.

16.Amendments

HPPCL may introduce modification thereto through the amendment of its specific provision as the need arises and the amendment to this policy shall be applicable to the future tenders/ vendors. This policy shall be a part of General Conditions of contract (GCC) of all upcoming tenders.

17.Disclaimer: In case of any conflict arises between the provisions stipulated in this manual and in HP Financial Rules or the prevailing laws, the provisions contained in the extant law shall prevail. Also, in case of any ambiguity in this manual the provision(s) of Manual for Procurement of Works (Updated June 2022) issued by Govt. of India, Ministry of Finance, Department of Expenditure wherever applicable shall prevail, and in case of inconsistency found in this manual and contract provisions, the relevant contract provisions shall be applicable.

SECTION- 3

Preparation of Estimate

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Preparation of Estimate

A: Infrastructure Works

1. Perspective Planning for Works: The Respective Directorate shall prepare a perspective plan for different types of works. There shall also be a provision for annual review of the plan for making modifications, if any.

2. Preparation of Preliminary Project Report (PPR) or Rough Cost Estimate: For the works to be executed by HPPCL, a preliminary project report (PPR) or Rough Cost Estimate shall be prepared by the indenting department based on Land, Site Details, functional and space requirements (or Various Facilities, Special Requirements/Features and Broad Specifications for specialized Equipment and Plants), Layout Plans etc, with the technical details/ documents mentioned below being prepared by (or under the guidance of) the technical member(s) of the respective indenting Directorate.

The preliminary project report shall provide the following details:

- i) Background of the work/ project justifying the need for the work.
- ii) Details of scope of the project
- iii) Exclusions (if any) - This will cover part of the work, which is not included in this particular project estimate.
- iv) Availability of land - There should be a clear indication about the availability of land required for completion of whole project. The land shall be made available free of all encumbrances.
- v) Availability of auxiliary services - like roads, power, water, solid & liquid waste disposal system, street lighting and other civic services shall be ensured.
- vi) Reference to Concept Plans/ Preliminary Drawings, if any and their acceptance This shall indicate the details of Concept Plans/ Preliminary Drawings prepared and their approval by the requisitioning authority.
- vii) Rough Cost Estimate: The respective Directorate may carefully assess alternative technological options, their area requirements and obtain Rough Cost on the basis of CWC/HPPWD/HPIPH/HPSEBL/HPPTCL or other similar Govt. organizations pioneer in their respective field (or any other reliable basis) without preparation of drawings to enable the competent authority to accord in principle approval.
- viii) If relevant, Cost benefits analysis of the project, including evaluation of options for cost sharing/ recovery (user charges) for infrastructure/ services. Principles of Life Cycle Cost may also be considered, to the extent feasible.
- ix) Cash flow: This will show year-wise requirement.
- x) Source & availability of funds - The manner of transferring the fund to the executing agency to be spelt out.

3. Acceptance of necessity and issue of in-Principle Approval: Approval of competent authority for accepting the necessity of works and its Scope should be sought on the basis of PPR or Rough Cost Estimate and in Principle Approval of the concerned Directorate shall be made available for preparation of Detailed Project Report or Preliminary Estimates.

4. Preparation of Detailed Project Report (DPR) /Preliminary Estimates (PE):

On receipt of in-Principle Approval of the project, the HPPCL/ Respective Directorate shall finalize the Detailed Project Report giving reference to the documents mentioned below. The DPR should provide a level playing field to the bidders and should ensure as far as feasible, the widest possible competition.

- i) Reference to Concept plan/ preliminary drawings and their acceptance - This shall indicate the details of Concept plan/ preliminary drawings prepared and their approval by the requisitioning authority.
- ii) Details of scope of the project indicating clearly the list of Engineering Services (Civil/Structural/Mechanical/ Electrical/ Plumbing etc.) as well as Operation and Maintenance included or not included in the DPR/PE.
- iii) Preliminary estimated cost – This will also include the expected escalation for the period of completion of the project and also the departmental or lump sum charges to be paid to the executing agency. Cash flow projection should show year-wise requirement. While designing the projects etc, if and to the extent possible, principles of Life Cycle Cost may also be considered.
- iv) Time of the completion – This will consist of two parts, one for pre-construction activity till award of the work and the other one for the execution.
- v) Details of land required along with land plan schedule to implement timely land acquisition procedures.
- vi) Environmental impact assessment (EIA) of the project and approval thereof, wherever applicable.
- vii) Social Impact Assessment and Resettlement and Rehabilitation: Social Impact Assessment needs to be done, based on baseline socio-economic survey and census survey data, to identify the Project Affected People (PAPs). A Resettlement and Rehabilitation Plan should be prepared for the PAPs in accordance with the LARR Act 2013 or National Policy on Resettlement and Rehabilitation (NPRR), and State Governments framework of resettlement policies and other social safeguard policies designed to protect the rights of the affected persons and communities as applicable.
- viii) List of Approval of Statutory Bodies required.
- ix) Annual plan allocation and cash flow.
- x) Systems to be adopted for project monitoring.
- xi) Works accounting system.
- xii) Quality assurance system/ mechanism.
- xiii) Bidding Systems - Single, two parts, pre-qualification, Post- qualification.

For repair works, housekeeping, maintenance, manpower supply jobs and works other than new Capital Projects, preparation of DPR and PE may be dispensed with, since these works does not need detailed designing. Sanction may be accorded by the competent authority based on HPPCL's DoP Provisions.

5. Administrative Approval and Expenditure Sanction (A/A and E/S):

Administrative approval and Expenditure Sanction (A/A and E/S) will be accorded to the execution of work by the competent authority after due examination of Detailed Project Report and Preliminary estimates. Post Sanction changes in scope and specification lead to delay, loss of quality and contractual

penalties therefore such A/A & E/S and Financial concurrence shall be accorded after carefully assessing their requirements. The sanction order should contain scope of work, estimated cost, and time schedule for completion of work and funding sources along with their share.

- 6. Detailed Designs, Detailed Estimates and Technical Sanction:** Except where the work is to be undertaken in the EPC mode, on receipt of sanction of the project, based on DPR or PE, HPPCL shall prepare and accord Technical Sanction to detailed and coordinated design of all the Architectural, Civil, Electrical, Mechanical, Horticulture and any other services included in the scope of the sanction and of the Detailed Cost Estimates containing the detailed specifications and quantities of various items prepared on the basis of Scheduled Rates of CWC/HPPWD/HPIPH/HPSEBL/HPPTCL or other similar State Govt./ Centre Govt. organizations pioneer in their respective field (as the case may be) so as to ensure that proposals are structurally sound and that the estimates are accurately calculated based on adequate data. Finalization of 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 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.
- 7. Reference Documents used in preparation of Estimates:** For preparation of estimates and during execution of work following reference documents are used by HPPCL. These may be separate for different regions, various types of works - Building, Electrical and Mechanical.
 - i) Plinth Area Rates** which provide a quick but fairly accurate method of estimation of cost of buildings.
 - ii) Schedule of Rates** for each kind of work commonly executed to facilitate the preparation of estimates, as also to serve as a guide in settling rates in connection with contract agreements, maintained up-to-date. 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 may be.
 - iii) Analysis of Rates** by taking market rates of labour, materials, cartage etc and their quantities for each kind of work commonly executed.
 - iv) Specifications** describing inputs, processes, tests and mode of measurement for each kind of work commonly executed.
- 8. Preparation of estimates for works other than Project/ Construction work(s):**

For labour supply works: The requirement of type different categories of labours required for the work to be assessed carefully with justifications by the indenting department. The estimated rates for all labour supply contracts shall be based on applicable minimum wages issued by the State Govt. The estimated

service charge in terms of the percentage of total statutory payments shall be prepared considering either the previous contracts service charge, if available, or the minimum service charge as per the GeM portal. Further, the provision should be kept for payment of revised statutory payments in case of any variation in minimum wages during the contract period. However, the service charge percentage shall be constant throughout the contract period, including the extended period, in case of extension of contract period.

For Civil repair/maintenance/construction works: The rates as per standard schedule of rates issued by the Govt. authorities like State PWD etc. rates for the concerned locations shall be adopted.

For any new works where, standard rates are not available: Budgetary offer obtained from minimum of three agencies have to be enclosed and average of three offers to be considered for the purpose of estimate. However, if for any reason, the three offers cannot be obtained; estimate can be prepared based on the available budgetary offer, with reasons to be recorded for not obtaining three budgetary quotations.

In the absence of standard rates, the previous work order rates can be considered for the purpose of estimate. In such cases, the estimation should be brought to the current level by considering the price index.

B: Hydro Power Project(s):

The DPR of Hydro Power Projects are to be prepared and processed for approval as per the procedures specified in guidelines issued by the CWC/ CEA Govt. of India (GoI) from Time to Time such as “Guidelines for Formulation of Detailed Project Reports for Hydro Electric Schemes, their Acceptance and Examination for Concurrence”, etc.

The cost estimate for Hydro Projects shall be framed as per the guidelines issued by the CWC/ CEA Govt. of India (GoI) from Time to Time such as “ Guidelines for Preparation of Project Estimates for River Valley Projects”, Report of Committee on Cost Control of River Valley Projects etc.

SECTION-4

Procurement Procedure

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Procurement Procedure

For the initiation of any bidding process, a notification is to be published in newspapers at least 14 days before the submission of tender using either the open or the limited tendering method. In case the tender value is more than 5 lacs, the notification shall also be published on the HP Tender website and the official website of HPPCL. The procurement method used in general aligns with either of the following:

- 1. Types of Contract** There are different basis for linking payments to the performance of Contract (called types of contracts) – each having different risks and mitigation measures. Bids are called and evaluated based on the type of contract. The choice of the type of contract should be based on Value-for-Money (VfM) with due regard to the nature of Work. Adoption of an inappropriate type of contract could lead to a situation of lack of competition, contractual disputes and non- performance/ failure of the contract. Each type of contract is described briefly and criteria are suggested for their adoption. The types of contracts are:

1.1 Lump sum (Fixed Price) Contract

- i) This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost - no arithmetical correction or price adjustments are allowed during evaluation and execution. Payments are linked to clearly specified outputs/ milestones.
- ii) Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions are minimal.
- iii) A Schedule of Rates (SR) to be specified in order to regulate the amounts to be added to or deducted from the fixed sum on account of additions and alterations to drawings, designs and specifications not covered by the contract.
- iv) The contractor shall be paid from time to time as per the schedule specified in the contract or the full amount on completion of the work. In the concept of priced "activity schedules" to be used, to enable payments to be made on the basis of percentage completion of each activity. The billing schedule shall commensurate with the actual work done, and the risk of front loading strictly guarded against.
- v) Detailed measurements of work done in a lump sum contract are not required to be recorded, except in respect of additions and omissions. No reference is made in the contract to the departmental estimate of the work, prevailing SR or the quantities of work to be done. Payment of additions and omissions is regulated by prevailing SR as agreed upon while approving the tender or the rates.

1.2 Item rate (Unit Rate) Contract

- i) For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the HPPCL in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract.

- ii) The payment is made at the rate set out in the contract for the measured quantity within prescribed range [usually +25 (twenty five) percent per item] of the estimated quantity of the initial BOQ. However, the prescribed range may vary from case-to case basis, with the approval of competent authority. In such cases, the payments shall be made as per the prescribed range mentioned in respective contract(s). Approval of competent authority with CFA (Concurrence of Finance & Accounts) is required in case the actual total value exceeds the sanctioned value or the variation in individual items is more than prescribed limit.
- iii) This type of contract should be adopted for all types of civil/structural/mechanical/ erection works.
- iv) Specifications, design, drawings and contract conditions (including availability of land, forest clearance, social and environmental impact assessment, where applicable) have to be critically appraised before the initiation of procurement process, in order to minimise the incidence of internal inconsistencies, variations, and situation of claims/ disputes or contract failure.

1.3 Percentage Rate Contract

- i) For percentage rate contract, the contractors are required to quote rate as overall percentage above/below/ at par the total estimated cost or the pre priced schedule of work.
- ii) This type of contract can be adopted for works of maintenance nature where the individual quantities cannot be ascertained. Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill. The payment is made for the measured quantity. Contract provisions are made to determine the price of the items not included in SR. In the absence of a standard schedule of rates, a project specific schedule of item(s) and their rate(s) is worked out and to be paid with the approval of competent authority.

1.4 Engineering, Procurement and Construction (EPC) Contracts

- i) The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.
- ii) The EPC Agreement are based mainly on output specifications/performance standards. HPPCL specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The HPPCL bears the risk for any delays in handing over the land,

- approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans.
- iii)** Selection of the contractor is based on open competitive bidding. All project parameters such as the contract period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders are required to specify only the lump sum price for the project. The bidder who seeks the lowest payment is awarded the contract. The contract price is subject to adjustment on account of price variation during the contract period as per a specified formula. It also lays down a ceiling of 10 (Ten) per cent of contract price to cater for any changes in the scope of project, the cost of which will be borne by HPPCL.
 - iv)** The selected Contractor carries out survey and investigations and also develops designs and drawings in conformity with the specifications and standards laid down in the Agreement. HPPCL reviews the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. Any comments by the HPPCL on the design proposals submitted by the contractor are to be communicated in totality once in a time-bound manner as indicated in the schedule.
 - v)** The Contractor is liable to pay Liquidated Damages for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 (Ten) per cent of the Contract Price. However, the Contractor is entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the HPPCL. If so provided in the Bid Document.
 - vi)** Monitoring and supervision of construction are undertaken through HPPCL authorised representative, acting as a single window for coordination with the contractor.
 - vii)** Each item of work is further sub-divided into stages and payment based on output specifications and performance standard is to be made for each completed stage of work. Defects liability period of one year to be mentioned in the Agreement. However, the defect liability period may vary from case to case basis. Approval of competent authority to be obtained in such cases.
 - viii)** 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.
 - ix)** 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.
 - x)** 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.

- xi)** EPC contracts shall specify broad technical specification and key output parameters. Over-specification of design may lead to increase in cost. Technical specifications shall be framed in such a manner to allow sufficient freedom to the contractor to optimize design. Provisions on the following should be included in commercial conditions:
 - a)** Limitation of liability for HPPCL as well as contractor.
 - b)** Deviation limits and procedure for change of scope.
 - c)** Contract closing timelines and procedure to ensure timely closing of contract.
 - d)** Performance parameters and liquidated damages for shortfall in performance
 - e)** Risk matrix and responsibilities of the contractor and the HPPCL.
- xii)** In addition, a latent defect period beyond the defect liability period may be included to protect the HPPCL and public authority interest in case of any design/ engineering defect after the defect liability period is over, wherever appropriate.
- xiii)** To mitigate the risk involved in the methodology proposed by the contractor, HPPCL shall either use in-house engineering, quality assurance and project management expert or alternatively hire an experienced engineer/consultant to intensively examine the proposal submitted by the contractor. It shall be ensured that optimal technological solutions are provided by the contractor.
- xiv)** To ensure equality, regular inspection and quality checks must be carried out. HPPCL shall carry out stage inspections in manufacturing of critical equipment/critical activities of the project.

1.5 Market Engagement

Market engagement for the procurement of works has become an increasingly important aspect of the public and private sector, especially as focus on infrastructure development and economic growth. Effective market engagement ensures that procurement processes are competitive, transparent, and lead to the selection of the most qualified suppliers or contractors for projects. The detailed overview of market engagement for procurement of works:

i) Understanding Market Engagement

Market engagement refers to the process of interacting with potential suppliers, contractors, or service providers before initiating formal procurement. The goal is to gain insights into market conditions, capacity, pricing, and innovations. It also aims to build relationships and foster transparency, trust, and competition.

Market engagement has become essential in the procurement of works, particularly for Hydro Project large infrastructure projects. Engaging the market helps to gauge the interests and capabilities of potential vendors and ensures a more efficient procurement process.

ii) Legal and Regulatory Framework

There is a structured legal and regulatory environment for procurement, particularly for public works. The General Financial Rules (GFR), Public Procurement (Preference to Make in India) Order, and Central Vigilance Commission (CVC) guidelines regulate procurement practices. In addition, e-procurement systems, foster greater transparency and participation from the market.

iii) Types of Market Engagement

There are various ways to engage the market for procurement of works:

a) Pre-tender Market Engagement

This occurs before the formal tendering process begins. Activities include:

- (i)** Market consultations: Engaging with potential contractors to understand their capabilities, pricing expectations, and concerns.
- (ii)** Pre-qualification questionnaires (PQQs): Screening vendors for their technical and financial capacities.
- (iii)** Industry workshops: Organizing discussions with key industry players to understand market trends, risks, and innovations.

b) Tendering Process Engagement

Once the tender process is initiated, market engagement continues through:

- (i)** Clarification rounds: Allowing bidders to seek clarifications on tender documents.
- (ii)** Site visits and pre-bid meetings: Ensuring that contractors understand the project scope, technical requirements, and site conditions before submitting their bids.

c) Post-award Engagement

After awarding the contract, continuous market engagement helps ensure smooth execution. This includes:

- (i)** Performance monitoring: Regular checks to ensure compliance with contract terms.
- (ii)** Feedback sessions: Both contractors and clients may engage in post-completion evaluations to identify lessons learned.

iv) Benefits of Effective Market Engagement

- (i)** Enhanced competition: By engaging the market early on, stakeholders can identify a wider pool of capable contractors, thus fostering competition and leading to better value for money.
- (ii)** Cost-effective procurement: By understanding the market dynamics, procurement entities can anticipate realistic pricing, avoid overpricing, and ensure cost-effective execution.
- (iii)** Risk management: Early engagement helps in identifying potential risks (technical, financial, or legal) and mitigating them before the project begins.
- (iv)** Innovation and quality improvement: Suppliers may offer new, innovative solutions that meet project goals in more efficient ways.
- (v)** Transparency and accountability: Engagement with the market builds trust and ensures that the procurement process remains open and transparent.

v) Challenges in Market Engagement

Despite its benefits, market engagement faces some challenges:

- (i)** Lack of awareness or preparedness: Many contractors, particularly smaller ones, may not be fully prepared to participate in market engagement processes.
- (ii)** Fragmented market: Construction and procurement markets are diverse and fragmented, which can make it difficult to standardize procurement processes and ensure equal participation.
- (iii)** Corruption risks: In some cases, market engagement processes can be vulnerable to manipulation or corruption, though reforms have been introduced to mitigate this.
- (iv)** Regulatory and procedural delays: Any delay in decision making can hinder the effective and timely execution of market engagement activities.

vi) Technological Advancements in Market Engagement

Technological Advancements increasingly leveraging technology to enhance market engagement in procurement processes:

- (i)** E-procurement platforms: The use of digital platforms, such as the Government e-Marketplace (GeM) and e-tendering portals, ensures transparency and wide participation.
- (ii)** Data analytics: Procurement bodies use data analytics to understand market trends, contractor performance, and pricing fluctuations to make informed decisions.
- (iii)** Building Information Modeling (BIM): In the construction sector, BIM technology is increasingly being used to engage the market on project design and execution, improving the quality and efficiency of work.

vii) Conclusion

Market engagement plays a critical role in the procurement of works, particularly in large-scale infrastructure and construction projects. By fostering competitive bidding, transparency, and risk management, effective market engagement ensures the success of projects and maximizes value for money. However, it also requires overcoming challenges related to market fragmentation, regulatory complexities, and corruption risks for hydropower & infrastructure development, ongoing reforms and the adoption of technology will likely enhance market engagement processes, driving efficiency and innovation in procurement.

2. Modes of Procurement:

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

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

- i.** Open Tender
- ii.** Limited Tender
- iii.** Single Tender enquiry

i) Open Tender:

- a.** In open tender enquiry, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites. This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged. The systemic cost of this procedure may be high enough to be unviable for smaller value procurements.

Open Tenders are those enquiries issued:

- (i)** to all parties registered for the relevant class of Works, or eligible bidders, or to all pre-qualified bidders, or
- (ii)** through open press advertisement in local, regional and national newspapers for Works with estimated cost more than Rs. 2 crore and in local, regional and/or national newspapers for Works with estimated cost more than Rs. 20 lakh; provided that all such tender notices are also hosted on official website of company, or
- (iii)** to CEOs/Head of local Govt. departments/ organizations, and to the union of Contractors, if any, for display on notice boards, and also to the existing Contractors at site for Works with estimated cost less than Rs. 20 lakh, or
- (iv)** to a party having rate contract with DGS&D/ State purchase organizations and willing to offer goods on the rates and terms & conditions of the rate Contract.

- b. Advertisement:** Open tender enquiry by way of advertisement would not be necessary in view of high cost of advertisement where the estimated value of procurement is less than Rs. 20 lakh. There shall be no objection to limited tender enquiry being called in such cases. If, however, for any valid and compulsive reasons, open tender enquiry by way of advertisement is considered as justified for procurement estimated at less than Rs. 20 lakh, approval for the same may be taken at a level not less than GM. The text of the tender enquiry will be approved by the Head of Contracts Department at project or corporate office, as may be functionally responsible for.

OTE-Risks and Mitigations	
Risk	Mitigation
<p>Since the crux of this mode of procurement is attracting bids from all possible prospective bidders. The risk is that this may not be achieved, even after incurring extra cost of open tendering. This could be due to</p> <ul style="list-style-type: none"> • Insufficient publicity; • Hindrances in availability of bid documents; • insufficient time for bid preparation; or • Due to onerous cost of bid- documents or EMD 	<p>It should be ensured that the NIT on the website is easily searchable and visible, not hidden under layers of clicks. The matter should not be left entirely to the website or media publicity alone. Due diligence should be done to locate likely bidders (including past bidders) and their attention should be drawn through SMS/mail/email. All enlisted vendors/ contractors (in particular past successful vendors/ contractors) should be given intimation about forthcoming tenders via SMS/ mail/ email.</p> <p>Further a limited or open tender which results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc.</p>

	<p>It should be also ensured that there is no impediment to issue/ access of bid documents.</p> <p>The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements. The due date may be subsequently extended with the approval of the CA, only if it is felt necessary to have better competition.</p> <p>The tender documents, shall be priced minimally (if at all priced, Issue/Availability and Cost of Tender Documents). Keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents.</p> <p>EMD should be sufficient to ensure that bidders honor their bids but at the same time should not be large enough to reduce competition.</p>
Lack of clarity in description/ specification of requirement or undue stringency in qualifying criteria or other conditions.	Mitigations of such risks can be addressed at the time of need assessment and procurement planning, so as to attract adequate competition.

ii) Limited Tender:

- a.** Limited Tender is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances.

Limited tender enquiries are those enquiries issued:

- 1) for requirements of less than Rs. 20 lakh, or
- 2) in respect of requirement over Rs. 20 lakh for any valid and justified reason(s) to be recorded, and
- 3) to not less than four bidders, selected from the bidders list maintained on the basis of past experience or current offers or from the lists maintained in the State/ Central Govt. agencies or from among the existing parties based on their past/ present experience and/or based on the experience/ knowledge of the officials of the Corporation about the parties or from experienced sub-agencies of the main works Contractors.

LTE-Risks and Mitigations	
Risk	Mitigation
Major risk in this mode is that the demand may be artificially split to avoid LTE or higher level approvals	The e-procurement portal may be programmed to raise an alert if the same item is attempted to be procured through LTE repeatedly. Audit should take up a larger percentage of cases in LTE for review.

<p>There is a risk that LTE may not attract sufficient number of bids and sometimes there may be a single acceptable offer. This may be because of an insufficient database of enlisted/ known vendors. It could also be due to bid documents not reaching the targeted bidders—intentionally or otherwise. It could also be due to bidders not getting adequate time for submission of bids. On the other hand, unsolicited bidders may also quote—causing a transparency dilemma about consideration of such offers.</p>	<p>Maintenance of list of enlisted suppliers is a sine-qua-non for LTE. The List of enlisted vendors needs to be reviewed periodically to ensure adequate number of qualified suppliers. To ensure sufficient response, in addition to mails/emails to selected vendors, web-based publicity should be given for limited tenders, with suitable clarifications that unsolicited bids shall not be considered. Further a limited or open tender which Results in only one effective offer shall be treated as a single tender enquiry situation, with relevant powers of approval etc. Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.</p>
<p>There is also a risk that the selection of vendors may not be transparent. At the evaluation stage, some invited bidders may be passed over on grounds of being ineligible/ unreliable.</p>	<p>All major procuring departments must keep a list of enlisted bidders for use in restricted bidding. Suppliers or contractors should be selected in a non-discriminatory manner. All past successful vendors/ bidders should invariably be invited. In case it is proposed to exclude any enlisted/ approved vendor/ contractor from being shortlisted for inviting LTE, detailed reasons, such as failure in supply, should be duly recorded and approval of the CA be taken before exclusion. The selection of bidders should be with due diligence, to ensure that bidders who do not meet eligibility criteria do not get shortlisted. At the evaluation stage, in LTE, passing over of a duly shortlisted bidder on grounds of poor past performance or eligibility may raise questions about transparency.</p>

iii) Single Tender:

- a. Single tender enquiries, resorted to in cases of urgency/ single source availability/ specialized job/ negotiated work orders for petty jobs, may be placed without call of tenders, where resorting to tenders is neither practical nor economical, but shall be subject to the same being met from within the budget provision for the year. Also, in case of grave emergency, work orders may be placed without call of tenders. The negotiated work orders for petty jobs shall be awarded at the applicable local PWD/ project schedule of rates with prevailing premium, or at the rates derived from first principles including prevailing overheads and profit margin.

- b. For single tender enquiries, the reasons/ justification for adopting such mode of tendering shall be recorded in writing by the respective procurement department while obtaining the approval of the competent authority.

STE-Risks and Mitigations	
Risk	Mitigation
Risks as applicable in both LTE and OTE are also applicable here. In addition there is a risk that this mode may be used unjustifiably to avoid open tendering (OTE).	All mitigation strategies of LTE and OTE would apply here also. In addition the systems of checks and balances should be tighter by way of enhanced and severely restricted delegation of powers in this regard for certification of urgency and approval of this mode of procurement. A system of Reports from the authority signing the urgency certificate and post facto review of utilization of received goods/works/services to tackle the expressed urgency may be laid down. Audit should take up the bulk of such cases for review to judge the genuineness of urgency certification.

General Instructions, Government of India, Ministry of Finance, Department of Expenditure notification No.- P.1/1.2021 PPD dated 29th October, 2021 also stipulates as under:-

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 cost: 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 higher bid.

Lack of competition shall not 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 for bids;
- (ii) The qualification criteria were not unduly restrictive; and
- (iii) Prices are reasonable in comparison to market values

Note: The Financial Powers for all the modes of procurement are specified in the Delegation of Financial Powers issued vide office order no. No.: HPPCL/CS/DoP/2016-1025-62 dated 07-10-2016 and the same shall be followed in letter and spirit. The tender committees for the tender(s) shall also be constituted as Per Annex II of the aforementioned Delegation of Financial Powers.

3. Bidding Systems:

Bidding systems are designed to achieve an appropriate balance between the countervailing needs for Right Quality, Right Source and the Right Price under different complexities/criticality of Technical requirements and value of procurements. In certain critical and complex requirements, the technical and financial capability of

Source of supply becomes an important determinant for value for money. Depending on the complexity and criticality of Technical requirement, Criticality of capability of Source and value of procurement, following types of bidding systems may be used.

i. Single Stage Single Envelope Bidding System

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

ii. Single Stage Two Envelope Bidding System

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

- a. The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelop, called the techno-commercial bid, contains the eligibility, technical quality and performance aspects, commercial terms and conditions and documents sought in the tender, except the price and relevant financial details. In the second envelop, called the financial bid, the price quotation along with other financial details are submitted. Both the envelopes are to be submitted together in a sealed outer envelope;
- b. If required, Technical specification and techno-commercial conditions should be modified, in a pre-bid conference in the two envelop tender and it would be desirable not to invite fresh financial bids after opening of the techno-commercial bids;
- c. The techno-commercial bids are to be opened in the first instance on the bid opening date and time, and scrutinised and evaluated by the TC with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;
- d. Thereafter, in the second instance, the financial bids of only the techno-commercially compliant offers (as decided in the first instance above) are to be opened on a preannounced date and time for further scrutiny, evaluation, ranking and placement of contract. The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened.

iii. Invitation of EoI Tenders: In EoI tenders, an advertisement inviting expression of interest should be published. The invitation to the EoI document should contain the following information:

- a. A copy of the advertisement;
- b. Objectives and scope of the requirement: This may include a brief description of objectives and broad scope of the requirement;
- c. Instructions to the bidders: This may include instructions regarding the nature of work, last date of submission, place of submission and any other related instructions;

- d. **Formats for submission:** This section should specify the format in which the bidders are expected to submit their EoI;
- e. The EoI document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

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.

- iv. **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. An example of EoI eligibility criteria is shown in Table 1. However, appropriate eligibility criteria have to be designed, keeping in mind the specific objectives of the EoI. Criteria used should be measurable and based on documents that are verifiable. Definitions and explanatory notes shall be provided for each criteria that are simple and unambiguous. It may also be advisable to cross-check and verify these documents, when in doubt

Table 1: An example of EoI eligibility criteria

Criteria	Sub-criteria	Weightage	Break-up of Weightages
Past experience of the firm with similar requirements		A*	
Technical capabilities		D*	
Financial strength of the bidder		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	

*Weightages (out of 100) should be pre-decided and declared in EoI documents by the CA based on assessment of the required profiles of the potential bidders. The marking/ grading scheme for allotting marks (out of 100) for various parameters should also be laid down.

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

specified, should be shortlisted. The short list should normally comprise at least four firms.

vi. Pre-qualification Bidding (PQB)

- I. In high value contracts or complex technical requirements where capability of source of supply is crucial, for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding. In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Pre-qualification Criterion (PQC).
- II. Pre-qualification Bids (PQB) should meet the norms of transparency, fairness and maintenance of competition. Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of works and an eligibility criteria clause (post qualification) as part of single/ two envelope/ cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contra-indicated in the following circumstances:
 - i) Where procurement can be done through limited tender enquiries;
 - ii) Where the requirement is technically and commercially simple enough that prequalification of the bidder is not crucial for the performance of the contract, for example, routine residential buildings; and
 - iii) Where the procurement is of medium value (say less than Rs 100 crore) or moderately complex in nature and the time, effort and money required from the bidder to participate in a tender is not very high, a clear-cut, (preferably fail-pass) post-qualification criteria can be specified in a three envelope single stage bidding (instead of separate PQB bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.

- vii. Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable bidder/ contractor. Otherwise, it can lead to higher prices of procurement/ works/ services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable bidder/ contractor and thus vitiate fair competition for capable bidders/ contractors to the detriment of the Procuring Entity's objectives. A misjudgement in either direction may be detrimental. Certain guidelines regarding the framing of PQC have been laid down. Due consideration should be given while framing PQC, to its effect on adequacy of competition. PQC should therefore be carefully decided for each procurement with the approval of competent authority (CA). It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria. Specific criteria of 'pass' for each attribute will be as specified in the standard pre-qualification document. A bidder may be awarded more than one contract in a Tender if he: (a) meets the PQC of each of them; (b) demonstrates

having the resources in respect of financial, personnel and equipment capabilities to meet the aggregate of the specified capabilities for each contract; and (c) has bidding capacity at the time of bidding, as calculated by the above formula, more than the total estimated cost of these works. The attributes PQC should cover inter-alia:

- i) **General Construction Experience:** The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50 (fifty) percent of which is from Engineering (Civil/ Mechanical as relevant to the work being procured) carried out in any of the year over a stated period (normally five to seven years, ending 31st March of previous year), calculated by applying an appropriate multiplier to the projected annual construction expenditure on the subject contract. The multiplier of 2 may be used, but for very large contracts should not be less than 1.5.
- ii) **Particular Construction Experience and Key Production Rates**

The applicant should have:

- 1. successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following:-
 - 1.1 Three similar completed works costing not less than the amount equal to 40 (forty) percent of the estimated cost; or
 - 1.2 Two similar completed works costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or
 - 1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and
- 2. **Definition of “similar work” should be clearly defined.**
 - 2.1 The pre-qualification criteria specified in the tender document should neither be made very stringent nor very lax to restrict/ facilitate the entry of bidders. It is clarified that the guidelines issued are illustrative and the concerned offices may suitably modify these guidelines for specialized jobs/works, if considered necessary. However, it should be ensured that the PQ criteria are exhaustive, yet specific and there is fair competition. It should also be ensured that the PQ criteria are clearly stipulated in unambiguous terms in the bid documents.)
- 3. The applicant should also have achieved the minimum annual production value of the key construction activities (e.g. dredging, piling, or earthworks etc) stipulated.

The similarity of work shall be pre-defined based on the physical size, complexity, methods/ technology and/ or other characteristics described, and scope of works. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract. Note: Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration. For contracts under which the applicant participated as a joint venture member or sub-contractor, only the applicant's share, by value, shall be considered to meet this requirement. For arriving at cost of similar work, the value of work executed shall be brought to current costing level by

enhancing the actual value of work at simple rate of seven percent per annum, calculated from the date of completion to the date of Bid opening. Certificate for 'substantial completion' of project/work/asset should contain two parts. Part -I shall contain 'financial value of work done' and part-II shall contain 'certificate of functional completion of project/work/asset'.

iii) Financial Capabilities

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

iv) Personnel Capabilities

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

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

v) Equipment Capabilities

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

vi) Available Bid Capacity The bidder should possess the bidding capacity as calculated by the specified formula. The formula generally used is:

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

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

M = Multiplier Factor (usually 1.5)

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

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

vii) Pre-qualification of JV

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

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

viii) Disqualification

Even if an applicant meets the eligibility criteria and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

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

viii. Advertisement and Notification: The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. A minimum period of 21 (twenty-one) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days. The PQB documents should also indicate

- a) Scope of work (in physical as well monetary terms);

- b) Pre-qualification criteria for single contractors and joint ventures;
- c) Disqualification clause for misleading statements, or the applicant found to be ineligible on the basis of facts;
- d) Various questionnaires and forms, required to be answered and filled by the prospective applicant, in support of pre-qualification;
- e) Form of affidavit by the applicant in certification of the statements made and information given by him;
- f) Indicative requirements of qualifications and experience of key personnel for the project;
- g) Indicative requirements of annual production rates of key items of work;
- h) Indicative requirements of major plant and equipment;
- i) Indicative quantities of major items of work;
- j) Description of the project area, its climate and language, site of work and means of access; and
- k) Key plan of project area along with the site plan

l) Empanelment of contractors:

Competent authorities may empanel/ register contractors of those specific works 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.

m) Registration of Suppliers/Contractors

1. Any firm, situated in India or abroad, which is in the business of providing goods/works/services of specified categories of interest, shall be eligible for registration.
2. Firm, against whom punitive action has been taken, shall not be eligible for re-registration during the currency of punitive action.
3. In cases where the firm is not considered capable and registration cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms under intimation to the appellate authority.
4. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly.
5. Registration should be for specific trade groups of goods/works/services and should be published on HPPCL's website.
6. Letter of registration should mention that the registration is valid for a period of 1 to 3 years depending on the nature of good and would be considered for extension based on performance.
7. The contractors registered with various departments in Himachal Pradesh will be considered as registered contractors by HPPCL as well.
8. Procuring Entity shall retain its option to reassess firms already registered, at any later date, to satisfy itself about the current financial soundness/credit worthiness, facilities available, and so on.

9. The jurisdiction and tendering limit for different classes of contractors as per rules for “Enlistment of Contractors in HPPWD, HPJSV Department etc. “in respect of A, B, C & D class contractors.

Registered/enlisted suppliers and Contractors/Any Indian Individual, Sole Proprietorship Firm, Partnership Firm, Public Limited Company, Private Limited Company registered with any State/ Central PWD & JSV Departments as well as, PSU’s/ Autonomous bodies of Central & State Govt. are eligible to participate in the procurement process. Registered contractors may be preferred over the contractor that are not mandatorily enlisted as per the enlistment of contractors, however, unregistered contractors shall be considered upon by the discretion of HPPCL by producing a legit registration license from authorized department, provided the eligibility criteria and other conditions are satisfied.

The contractors enlisted with the HPPWD, HPJSV & HPSEBL etc. in class “A,” “B,” “C” and “D” shall be eligible for participation in the tendering process of HPPCL for value of tenders of their own class of registration, if tender conditions permit.

The enlisted contractor with the State/ Central PWD & JSV Departments as well as, PSU’s/ Autonomous bodies of Central & State Govt. who are submitting the bids in HPPCL shall have to abide by all the rules made herein and as amended from time to time during the currency of their enlistment.

n) Evaluation

At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per PQC criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.

o) Subsequent Procurement Tender

The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the prequalification approval and floating of the linked main procurement tender is less than six months. EoI should clearly specify the duration for which the pre-qualification criteria(s) is valid. After the expiry of such duration whenever a subsequent procurement shall be carried out, fresh pre-qualification criteria shall be incorporated in such tender documents.

4. Preparation of Tender Documents:

- i. The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their

competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.

- ii. In case of a limited tender, instead of a full set of SBD, simplified tender form is used as the tender document, after filling up the name of the bidder and details of requirements. It has the “terms and conditions of tender” printed on it. In any case, all enlisted bidders, who normally are invited to quote in such limited tenders, have already acknowledged acceptance of “general conditions of contract” as part of the enlistment application, which are applicable to such procurements, in additions to “terms and conditions of tender” on the obverse of tender form. If necessary, specifications and drawings or any other document may be enclosed with the limited tender form.
- iii. The Bidding documents must necessarily address the following essential aspects:
 - a) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed;
 - b) Limitation or preference for participation by bidders in terms of the Government policies;
 - c) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the Bidder’s eligibility to receive such a contract/supply orders. The qualification criteria should take care of the Bidder’s past performance, experience, technical competence and, financial strength to handle the contract successfully, compliance with environmental protection regulations/Environment Management System and so on);
 - d) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications.
 - e) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
 - f) Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which Procuring Entity will address the bidder’s questions;
 - g) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the bidding documents. SBDs should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered”;
 - h) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document;
 - i) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws

iv. Content of Bidding Documents

The main sections of the Bidding Documents are:

- a) Notice Inviting Tender (NIT);
- b) Instructions to Bidders (ITB);
- c) Eligibility and qualification criteria;
- d) Schedule of requirements;

- e) Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
 - f) Conditions of Contract (GCC);
 - g) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.
- v. A reading of the sections of the tender document will make the purpose and instructions clear. However, some broad guidelines for preparing bid documents are provided in the subsequent paragraphs:

a. Notice Inviting Tender:

The model NIT format in SBD should be used for publishing the tender notice. The NIT should be brief but must contain sufficient detail for a prospective bidder to decide whether to participate in the tender or not and, if he decides to participate, how to go about it. NIT should be published as per the current policy of Procuring Entity in this regard.

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

b. Instructions to Bidders (ITB):

ITB contain all relevant information as well as guidance to the prospective tenderers regarding all aspects of obtaining tender documents, and preparing and submitting a responsive bid. It also mentions the process of establishing the eligibility of the tenderer as well as evaluation and comparison of tenders and award of contract. ITB should not contain information on processes after the announcement of the award which should be covered in GCC, for example, the arbitration clause, resolution of disputes, and so on.

Important clauses of ITB which may require attention and action are:

i) Purchase Preference Policies

If the purchaser intends to give a purchase preference in line with current Government policies, this fact must be declared in the ITB and in NIT as well.

ii) Clarification of Tender Documents

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

iii) Amendment of Tender Documents

At any time prior to the date of submission of bids, the Procuring Entity may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email or by any other authorized mean being adopted at that time, to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are

available for sale), including the tender documents uploaded on the website. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, tender validity period, and so on, and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

iv) Bid Validity

A bid shall remain valid for the period mentioned in the ITB (normally 120(One Twenty) days for OTE and 180 (One Eighty) days for GTE. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

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

v) Sealing and Marking of Tenders (In case of Physical Tender Submission)

The tender document is to indicate the total number of tender sets (for example, in duplicate or in triplicate, and so on) required to be submitted. The tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as “Original”, “Duplicate,” and so on, and also printing the address of the purchase office and the tender reference number on the envelopes. Further, the sentence “NOT TO BE OPENED” before (due date and time of tender opening) is also to be printed on these envelopes. The inner envelopes are then to be put inside a bigger outer envelope, which will also be duly sealed marked, and so on, as above. If the outer envelope is not sealed and marked properly as above, the HPPCL will not assume any responsibility for its misplacement, premature opening, late opening, and so on. These details regarding the submission of bids should also form a part of the ITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

vi) Withdrawal, Substitution and Modification of Tenders (In case of Physical Tender Submission)

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

vii) Eligibility/Evaluation/Qualification Criteria

If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB or as a separate section of the tender

document. The bidder has to ensure that he provides convincing proof of having fulfilled these criteria. Any criteria not specified in the tender cannot be used for evaluation or qualification.

viii) Conflict of Interest among Bidders/Agents

A bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practices to the detriment of Procuring Entity's interests. The bidder found to have a conflict of interest shall be disqualified. A bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or
- d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder; or
- e) bidder participates in more than one bid in this bidding process. Participation by a bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/sub-assembly/assemblies from one bidding manufacturer in more than one bid.
- f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;
- g) in case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/common business/management units in same/similar line of business.

h) Schedule of Requirements

This section outlined the Works/ Services to be performed under the Contract.

c. Conditions of the Contract (CC)

The CC to be used for contracting for procurement are provided in Procuring Entity's bidding documents. CC covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution. It should not cover any aspect up to announcement of award.

d. Submission Formats

This section contains the relevant forms for tender submission: various declarations by tenderer, formats for the bank guarantee, price schedule forms, exception and deviation forms, contract forms and manufacture's authorisation form, and so on.

5. Receipt and custody of Tender

Tender documents should preferably be sold or available for download up to date of opening of tenders and this should be clearly indicated in the documents. The Procuring entity should also post the complete tender document in the website and permit prospective tenderers to make use of the document downloaded from the website. The

tender document fee should be as low as possible considering the cost/effort of preparing documents.

Cost of Tender Documents	
Estimated value of Tender	Tender Document Cost
Below Rs 25 lakh	Rs. 1000
Rs 25 Lakh to Rs 2 crore	Rs. 5000
Rs 2 crore to Rs. 25 crore	Rs. 10,000
Rs 25 crore to Rs. 50 crore	Rs. 15,000
Above Rs 50 crore	Rs. 25,000

Note: Cost of tender can be revised with the approval of competent authority with prospective effect for new tenders.

6. Pre-bid Conference

In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly works/services, large works and complex consultancy assignments, a suitable provision is to be kept in the bidding documents for one or more pre-bid conference for clarifying issues/clearing doubts, if any, about the specifications and other allied technical/commercial details of the works/services plant, equipment and machinery projected in the bidding document and for ensuring that the technical requirements provide a level playing field. The date, time and place of the pre-bid conference should be indicated in the tender enquiry document. Bidders should be asked to submit written queries in advance of the conference. After the conference, Minutes of the pre-bid meeting including all the questions and replies shall be prepared and approved by the competent authority. In order to bring clarity to replies, all questions/ answers and needed amendments should be merged in the sequence of clauses in the bidding document. It is a good practice to consolidate all queries received either as part of pre-bid meeting or just after issuing bidding documents and deal with in a comprehensive way. Minutes of the meeting, including the text of the questions raised and the responses given, shall be transmitted without delay to all purchasers of the bidding documents. The techno commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents.

7. Extension of Tender Opening date

Sometimes, situations may arise necessitating modification of the tender documents already issued or already put on sale. Also, after receiving the documents, a tenderer may point out some genuine mistakes necessitating amendment in the tender documents. In such situations, it is necessary to amend/modify the tender documents suitably prior to the date of submission of bids. Copies of such amendment/modification should be simultaneously sent to all the selected bidders by registered/speed post/courier/e-mail or by in case of LTE. In case of OTE, the copies of such amendment/modification are to be simultaneously despatched, free of cost, by registered/speed post/courier/e-mail or by any other authorized mean being adopted at that time, to all the parties who have already purchased the tender documents.

When the amendment/modification changes the requirement significantly and/or when there is not much time left for the tenderers to respond to such amendments, and prepare revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding time-frames for receipt of tender, tender validity period etc and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

8. Sealing and marking of bids by bidders (In case of Physical submission of Tender)

The tender document is to indicate the total number of tender sets (e.g., in duplicate or in triplicate etc.) required to be submitted. In case of two envelop bidding system, the techno-commercial bid and financial bid should be sealed by the tenderer in separate covers duly marking these as 'Techno-commercial Bid' and 'Financial Bid' and marked these with the address of the purchase office and the tender reference number on the envelopes. Further, the sentence "NOT TO BE OPENED" before..... (due date & time of tender opening) are also to be put on these envelopes and these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed in a similar manner. In case bids are asked in a number of copies, the tenderer is to seal the original and each copy of the tender in separate envelopes, duly marking the same as "Original", "Duplicate" and so on and also marking these as mentioned above. The inner envelopes are then to be put in a bigger outer envelope, which will also be duly sealed marked etc. as above. If the outer envelope is not sealed and marked properly as above, the Procuring entity will not assume any responsibility for its misplacement, premature opening, late opening etc. These details regarding the submission of bids should also form a part of the ITB in the tender documents; all the above instructions are to be suitably incorporated in the tender documents.

9. Submission, Receipt and Custody of Tenders (In case of Physical submission of Tender)

The receipt and custody of bids shall be done in a transparent manner to maintain the credibility of the process. The following guidelines should be adhered to for receipt and custody of bids:

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

10. Withdraw/Amendments/Modifications to Bids by Bidders (In case of Physical submission of Tender)

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

11. Procedures to be followed during Bid Opening (In case of Physical submission of Tender)

Immediately after the deadline for bid submission, Procuring Entity shall proceed to the bid opening.

- i) The authorised representatives of bidders, who intend to attend the tender opening are to bring with them letters of authority from the corresponding bidder. The prescribed format for the letter of authority for attending the bid opening should be given in the bidding document. All bid-opening activities should be carried out demonstrably before such a gathering.
- ii) At a prescheduled date and time, the BOC of the day should get the particular tender box opened, after ensuring and demonstrating that the seal on the box has not been tampered with. All bids should be collected from the tender box. Bids for tenders not opening on that day should be put back into the box and the box resealed. Sometimes, there would be tenders dropped wrongly into this tender box. Such wrongly dropped tenders with appropriate endorsement should be put into the appropriate box or sent to the Tender Committee (TC) concerned, if the date of opening is over. The bids for different tenders opening on the day (including oversized bids, which were submitted to designated officers) should be sorted, and a count for each tender should be announced and recorded, particularly noting any modifying/altering/withdrawal of bids. BOC should ensure and demonstrate that bid envelopes are duly sealed and untampered. Late bids should be separately counted but kept aside and not opened. In the case of an advertised tender enquiry or limited tender enquiry, late bids (that is, bids received after the specified date and time for receipt of bids) should not be considered.
- iii) After opening, every tender shall be numbered serially (say 3/14 – if it is the third bid out of 14 total), initialled, and dated on the first page by the BOC. Each page of the price schedule or letter attached to it shall also be similarly initialled, particularly the prices, delivery period, and so on, which shall also be circled and initialled along with the date. Any other page containing significant information should also be dealt with similarly. Blank tenders, if any, should be marked accordingly by the BOC. The original (and duplicate, if any) copies in a tender set are to be marked accordingly by the BOC;
- iv) Erasure/cutting/overwriting/use of whitener/columns left unfilled in tenders, if any, shall be initialled along with date and time and numbered by the officials opening the tenders and total number of such noticed alterations (or the absence of any alteration) should be explicitly marked on the first page of the bid. Wherever quantity/amount is written only in figures, the BOC should write them in words. All

rebates/discounts should be similarly circled, numbered and signed. In the absence of any alteration/overwriting/whitener/ blanks, the remark “no corrections noted” should be written. Similarly, the absence of discounts should be marked with “no discounts noted;”

- v) The BOC is to announce the salient features of the tenders such as description and specification of the work, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- vi) Proper sealing and codification need to be done on samples as well for samples which accompany the bid. These should be kept for reference under lock and key. Details should be recorded in the sample register maintained in the opening section. Documents related to money should be noted in the bid opening report/register and handed over to the Finance Section for safe custody and monitoring; and
- vii) A bid opening report containing the names of the tenderers (serial number wise), salient features of the tenders, as read out during the public opening of tenders, will be prepared by the tender opening officers, and duly signed by them along with the date and time. The tenders that have been opened, list of the representatives attending the tender opening, and bid opening report are to be handed over to the nominated officer related to procurement and an acknowledgement obtained for him.

12. Forms of Securities:

i. Bid Security:

“To safeguard against a bidder’s withdrawing or altering its/his bid during the bid validity period in the case of OTE and GTE tenders, Bid Security (also known as Earnest Money Deposit (EMD)) is to be obtained from the bidders along with their bids. Any bid not accompanied by the requisite bid security shall be rejected as non-responsive in accordance with provisions of the bidding document. The amount of Bid Security should generally be between two (2%) to five(5%) per cent of the estimated value of the Works/ Services to be procured. The exact amount of Bid Security, rounded off to the nearest thousands of Rupees, as determined by the Procuring Entity, is to be indicated in the bidding documents. The Bid Security may be obtained in the form of an account payee demand draft, fixed deposit receipt, or banker’s cheque. However, in case the Bid Security is more than a threshold (Rupees five lakh) and in case of higher amount may be in the form of a irrevocable bank guarantee issued/confirmed from any of the Nationalized or scheduled commercial bank in India in an acceptable form, and so on, safe guarding the HPPCL interests in all respects. The Bid Security is normally to remain valid for a period of 90 (Ninety) days beyond the final bid validity period. In case of global tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities.

Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 45th day after the award of the contract. Bid Security should be refunded to the successful bidder on receipt of a performance security. However, in case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 45 days of declaration of result of first stage i.e. technical evaluation etc.

A bidder's bid security will be forfeited if the bidder withdraws or amends its/ his tender;

i) impairs or derogates from the tender in any respect within the period of validity of the tender;

ii) If the bidder does not accept the correction of his bid price during evaluation; and

iii) If the successful bidder fails to sign the contract or furnish the required performance security within the specified period.”

ii. Performance Security

“To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract.

Performance Security should be for an amount of Five to Ten per cent of the value of the contract as specified in the bid documents.

Performance Security may be furnished in the form of an irrevocable Bank Guarantee/ account payee demand draft, fixed deposit receipt from a Nationalized or Commercial bank, bank guarantee issued/confirmed from any of the Nationalized or commercial bank in India in an acceptable form, safeguarding the purchaser's interest in all respects. In case of global tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities.

Performance Security is to be furnished by a specified date (generally 14(fourteen) days after notification of the award) and it should remain valid for a period of 60 (Sixty) days beyond the date of completion of all contractual obligations of the Contractor, including warranty obligations.

The Performance Security will be forfeited and credited to the Procuring Entity's account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he duly performs and completes the contract in all respects but not later than 60 (Sixty) days of completion of all such

obligations including the Defect Notification Period under the contract. Return of Bid/Performance Securities should be monitored by the officer(s) who is the custodian of the BGs and delays should be avoided. If feasible, the details of these securities may be listed in the e-Procurement portal, to make the process transparent and visible.”

iii. Verification of Bank Guarantees

Bank guarantees submitted by the tenderers as EMD/Performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/finance authority if it is in the specified format. Guidelines for verification of BGs submitted by the bidders/contractors against EMD/performance security/advance payments and for various other purposes are as follows:

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

iv. Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

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

monitoring of financial instruments shall be done by the respective EIC/HOP/HOD as the case may be.”

13. Modes of Payment:

Payments to Contractor(s)/ Service Provider are usually made by cheque/demand draft drawn on a Government treasury or any Scheduled Commercial Bank authorised by RBI for transacting Government business.. However, procuring entities should switch over to more transparent electronic payment systems like Electronic Clearance System (ECS), Real-Time Gross Settlement Systems (RTGS) National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways.

13.1 Documents for Payment:

- i) Certified copy of Interim Payment Certificate/ Final Bill as the case may be.
- ii) Any other document(s) as and if required in terms of the contract.

13.2 Taxes, Duties and Levies:

In the tender enquiry conditions, the tenderers, wherever applicable, should be asked to specifically state in their offer whether they intend to ask for the duties and taxes as extra over and above the prices being quoted. In the absence of any indication to this effect by the tenderers, it is to be assumed that the prices quoted include these elements and no claim for the taxes or duties or statutory variations there on should be entertained after opening of tenders and during the currency of the resultant contract.

In case the work/services/Goods against contracts placed by Procuring Entity are exempted from levy of town duty, Octroi duty, terminal tax and other levies of local bodies, the contractor/ suppliers should be informed accordingly by incorporating suitable instructions in the tender enquiry document and in the resultant contract. Wherever required, the contractor/ supplier should obtain the exemption certificate from the Employer/ Purchasing Department to avoid payment of such levies and taxes. In case such payments are not exempted (or are demanded in spite of the exemption certificate), the contractor/ supplier should make the payment to avoid delay in supplies and forward the receipt to the Employer/ Purchasing Department for reimbursement and for further necessary action.

As a general policy, the statutory variations in duties and taxes are to be allowed during the period from the date of the tender to the date of acceptance of the tender (that is, placement of the contract) and during the original/re-fixed delivery period of the contract so that both the contractor/ supplier and Employer/ purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

13.3 Exchange Rate Variation

Contracts with substantial import content and long delivery periods may have an Exchange Rate Variation clause. Tenderers specify import content and currency for conversion into Indian Rupees. The base date for rate calculation is decided by the purchase organization, with variations allowed within certain limits. Any customs duty changes due to exchange rate variation are borne by the Employer.

13.4 Taxes, Duties and Levies:-

(i) Statutory Duties and Taxes

Government-imposed duties and taxes, including GST, vary by product. Unless stated otherwise in the contract, any statutory changes in duties or taxes are the responsibility of the Employer. Tenderers must specify if they intend to include duties and taxes in their quoted prices.

(ii) Octroi and Local Taxes

If goods are exempt from local levies, the supplier should be informed via tender documents. Suppliers must obtain exemption certificates if required.

(iii) Customs Duty

Tenderers must separately specify custom duty amounts in their quotes for imported goods. The contract should clearly outline duty payment terms.

(iv) Duties and Taxes on Raw Materials

HPPCL isn't liable for any increased duties on raw materials during the contract period, unless specified in the contract terms.

13.5 Deduction of Income Tax, Service Tax, and so on, at Source from Payments

This will be done as per the existing law in force during the currency of the contract.

13.6 Refund

Contractors may seek refunds from authorities for taxes reimbursed by the HPPCL. Provisions for obtaining such refunds should be included in tender documents and contracts.

14. Evaluation of Bids and Award of Contract

The evaluation of tenders is one of the most significant areas of Procurement/ purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics & period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Care should be taken that preferences provided to any category of bidders on certain specified grounds should not result in single vendor selection. Similarly, no tender enquiry condition (especially the significant/essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be ensure that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process.

Preliminary Examination

14.1. Unresponsive Tenders

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

- i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or

14.1.1. Non –conformities between Figures and Words:

Sometimes, non-conformities/errors are also observed in responsive tenders between the quoted prices in figures and in words. This situation normally does not arise in case of e-Procurement. This should be taken care of in the manner indicated below:

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

14.1.3. Discrepancies between Original and Additional/Scanned Copies of a Tender

Discrepancies can also be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail.

14.2. Clarification of Bids/Shortfall Documents:

During evaluation and comparison of bids, the Employer may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/ speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No post bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought only in case of historical documents

which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.

14.3. Evaluation of Responsive Bids and Decision on Award of Contract

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of Single Stage Single Envelop Bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In Single Stage Multiple Envelops, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of tenders, financial bids of unsuccessful bidders would be returned unopened to them. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened financial bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

14.4. Evaluation of Techno-commercial Bid:

In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, to those in the bid document is ascertained. Additional factors, if any, incorporated in the tender documents may also be considered in the manner indicated therein. Evaluation has to be based only on the conditions included in the tender document and any other condition should not form the basis of this evaluation.

- 1. Evaluation of eligibility/qualification Criteria:** Procuring Entity/ Employer will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/ qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/his tender as well as such other allied information as deemed appropriate by Procuring Entity.
- 2. Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC

should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/deviation form submitted by the tenderer. It is important to judge whether an exception/deviation is minor or major. Minor exceptions/deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions/deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

3. **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.
4. **Minor Deviations:** A Minor deviation, reservation, or omission which should not be waived are those that:
 - i) Affects, in any substantial way, the scope, quality or performance of the Works and related services specified in the contract;
 - ii) Limits, in any substantial way, inconsistent with the tendering documents, the Procuring Entity's rights or the tenderer's obligations under the contract; or
 - iii) If rectified, would unfairly affect the competitive position of other tenderers quoting substantially responsive tenders.

14.5. Declaration of Successful Bidders:

If it is a multiple envelop tender, then the TC prepares a recommendation of techno-commercial bid to declare successful bidders. In such cases, after the approval of competent authority, the results of the Techno commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicised date, time and place or on the portal in case of e-Procurement. In single envelop/cover tender, TC proceeds to evaluate the price aspects.

14.6. Evaluation of Financial Bids and Ranking of Tenders in general.

- (i) If the price bid is ambiguous so that it may very well lead to two equally valid total price amounts, then the bid should be treated as unresponsive;
- (ii) Sometime certain bidders offer suo motu discounts and rebates after opening of the tender (techno-commercial or financial). Such rebates/discounts should not be considered for the purpose of ranking the offer but if such a firm does become L1 at its original offer, such suo motu rebates can be incorporated in the contracts. This also applies to conditional rebates, for example, rebate for faster payments, and so on;
- (iii) As per policies of the Government from time to time, the HPPCL reserves his option to give price/procure preferences as indicated in the tender document;

- (iv) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

15. Reasonableness of Prices

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

16. Consideration of Abnormally Low Bids

An Abnormally Low Bid is one in which the bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the bidder to perform the contract at the offered price. Procuring Entity may in such cases seek written clarifications from the bidder, including detailed price analyses of its bid price in relation to scope, schedule, allocation of risks and responsibilities, and any other requirements of the bids document. If, after evaluating the price analyses, Procuring Entity determines that the bidder has substantially failed to demonstrate its capability to deliver the contract at the offered price, the Procuring Entity may reject the bid/proposal. However it would not be advisable to fix a normative percentage below the estimated cost, which would be automatically be considered as an abnormally low bid. Due care should be taken while formulating the specifications at the time of preparation of bid document so as to have a safeguard against the submission of abnormally low bid from the bidder.

17. Negotiations

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

- i) Where the procurement is done on nomination basis;
- ii) Procurement is from single or limited sources;
- iii) Procurements where there is suspicion of cartel formation which should be recorded; and
- iv) Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements.

However, the recent guidelines of CVC in this regard shall be followed.

18. Cancellation of Procurement Process/Rejection of All Bids/Re-tender

The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. In case where

responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:

- i) If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
- ii) When none of the tenders is substantially responsive to the requirements of the Procurement Documents;
- iii) None of the technical Proposals meets the minimum technical qualifying score;
- iv) If effective competition is lacking. However lack of competition shall not be determined solely on the basis of the number of Bidders.
- v) The Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
- vi) If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall cancel the procurement process. Provided that the Procuring Entity, on being satisfied that it is not a case of cartelization and the integrity of the procurement process has been maintained, may, for cogent reasons to be recorded in writing, offer the next successful bidder an opportunity to match the financial bid of the first successful bidder, and if the offer is accepted, award the contract to the next successful bidder at the price bid of the first successful bidder.

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

19. Independence, Impartiality, Confidentiality and 'No Conflict of Interest' at all Stages of Evaluation of Bids

All technical, commercial and finance officials who have contributed to the techno-commercial or financial evaluation of bids, even though they may not be part of the TC should deal with the procurement in an independent, impartial manner and should have no conflict of interest with any of the bidder involved in the procurement. They should also maintain confidentiality of the information processed during the evaluation process and not allow it to reach any unauthorised person. They should sign a declaration at the end of their reports/notings stating that, "I declare that I have no conflict of interest with any of the bidder in this tender". TC members may make such a declaration at the end of their reports.

20. Tender Committee Recommendations/Report

The TC has to make formal recommendations for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have been verified. It is a good practice that TC should spell out salient terms and conditions of the offer (s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the bidders in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. In any decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

- i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
 - ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
 - iii) The price of the offer is reasonable and consistent with the quality required; and
 - iv) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.
- After the acceptance of these recommendations by the tender accepting authority, the Letter (Notification) of Award (LoA) can be issued.

21. Award of Contract

Prior to the expiry of the period of bid validity, the successful bidder will be notified (briefly indicating therein relevant details such as quantity, specification, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 (Fourteen) days).

The Letter of Acceptance in itself is a legal binding contract till contract agreement is signed. Generally, the contract is to be signed within 14 to 28 days.

22. Return of EMD of unsuccessful bidders

Upon the successful bidder furnishing the signed agreement and performance security, each unsuccessful bidder will be promptly notified and their bid security be returned without interest within 30 (thirty) days of notice of award of contract. The successful bidder's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

23. Performance Security

"The contractor receiving the LoA is required to furnish the required performance security (should be for an amount of Five to Ten per cent of the value of the contract as specified in the bid documents, if it is part of tender conditions, in the prescribed form by the specified date (generally 14(fourteen) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all

contractual obligations of the Contractor, including warranty obligations.; failing this necessary action including forfeiture of EMD will be taken against the supplier.”

24. Acknowledgement of Contract by Successful Bidder and Execution

After the successful bidder is notified that his bid has been accepted, he will be sent an agreement for signature and return, incorporating all agreements between the parties.

The contractor/supplier should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (Fourteen) to 28 (Twenty-Eight) days. While acknowledging the contract, the contractor/supplier may raise issues and/or ask for modifications against some entries in the contract; such aspects shall be immediately be looked into for necessary action and, thereafter, the contractor/ supplier’s unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the contractor/supplier) simultaneously sign the contract across the table, further acknowledgement from the contractor/ supplier is not required. It should also be made known to the successful tenderer that in case he does not furnish the required performance security or does not accept the contract within the stipulated target dates, such non-compliance will constitute sufficient ground for forfeiture of its EMD and processing the case for further action against it (the successful tenderer).

All contracts shall be signed and entered into after receipt and verification of the requisite performance security.

25. Framing of Contract

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

- i. Any agreement shall be issued strictly as per approved TC recommendations, be vetted by the Finance & legal cell and approved by competent authority. The terms of contract must be precise, definite and without any ambiguities. The terms should not involve an uncertain or indefinite liability, except in the case of a cost plus contract or where there is PVC in the contract. In other words, no contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Associated/integrated Finance.
- ii. All contracts shall contain a provision for Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
- iii. Payment of all applicable taxes by the contractor or supplier; and
- iv. Standard forms of contracts should be invariable adopted
- v. The contract shall explicitly state the termination clause and dispute redressal mechanism as mentioned in Section 4 – Contract Management.

26. Procurement Records

The Procurement file should start with the Indent and related documents. All subsequent documents relating to procurement planning; Copy of Bid Document and documents relating to its and formulation, publishing and issue/uploading; Bid Opening; Bids received; Correspondence and documents (including Technical Evaluation and TC report) relating to pre-qualification, evaluation, Award of Contract; and finally the Contract copy, should be kept on the file. In case of bulky Bids received, all bids received may be kept in a separate volume, with a copy of accepted bids later being put on the main volume. To maintain integrity of the records relating to Procurement, these files should be kept secure and for contract management a new volume of file may be opened to obviate frequent exposure of sensitive procurement

file. In contract management volume, copies of successful bid, Tender Committee Report, Contract may also be kept for ready reference, besides correspondence and documents relating to Contract Management and its closure.

27. Quality-cum-cost based Selection (QCBS) for works:

QCBS for procurement of work and non-consultancy services shall be adopted in where the procurement has been declared to be a Quality Oriented Procurement (QOP) by the competent authority or the principles of QCBS shall be as provided in Rule 192(i), (ii) and (iii) of the GFR. However, the maximum weight of then on-financial parameters shall in no case exceed 30%. The Competent Authority for allowing QCBS shall be as follows:-

For declaring a procurement as QOP:

- (i)** Where the procuring entity/project executing authority is covered by Rule 1 of GFR, the competent authority to which the procuring entity belongs.
- (ii)** Where the procuring entity is a CPSE, the Board of Directors of the CPSE.

In all cases of QOP, a Committee as provisioned by HPPCL shall be constituted.

The above Committee shall make specific recommendations on the following matters:-

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

The recommendations of the above Committee shall be followed except where there are special grounds for deviating from them. However, every case of deviation from the recommendations of the Committee shall require approval of the Competent Authority who approved the declaration of the procurement as QOP.

Grounds for declaring a Procurement to be Quality Oriented Procurement: A procurement should be declared as a QOP 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/prequalification-based/least cost system shall be documented.

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

- a.** To ensure quality, some of the criteria used in marking may be made mandatory and if abider does not meet those, then bids shall not be evaluated further.
- b.** Weightage may also be given for timely completion of past projects of similar nature by the bidder.

In all cases of QOP, 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 Committee.

Fixing of Scoring/Marketing Criteria:

- a.** The coring should not be a variable that relies on the subjective opinion of the evaluating panel. The marking scheme should enable achievement of almost similar cores irrespective of the persons/experts being involved in the evaluation process. When the outcome are consistent for the available information, the QCBS parameters

are more reliable. Unambiguous description and criteria help to avoid grey areas so as to endure 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.

- b. It is better to specify minimum marks for meeting the qualifying criteria specified.
- c. Examples of fixed quality parameters that ought not to be considered for relative scoring including organizations' ISO/standard accreditation, etc. These are required to establish the credentials of the service provider but cannot be used for relative comparison between the various bidders.
- d. 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.
- e. 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.
- f. Besides the Bill of Quantity (BOQ) output criteria for payment, Key Performance Indicators (KPI) may be specified with minimum achievement levels for payment so as to ensure quality compliance.

Evaluation of QCBS Bids: For evaluation, a suitable committee shall be constituted.

Joint Ventures in QCBS

- a. 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.
- b. If JVs are allowed, adequate safeguards should be provided. Since weightage for quality/ experience influences the award itself, measure 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 HOP/EIC/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.

28. E-Tendering

- a) In case of E-Tendering the procedure for Procurement shall be regulated as per approved policy/ Guidelines of HPPCL. Tenders shall be invited with publicity through web for works upto Rs 5 lacs as per procedure defined in this regard. Procurement for works with estimated cost more than Rs.5 lacs shall be invited through e-tendering platform.
 - (1) It is mandatory to e- publish all Tender enquiries, Requests for Proposals, Requests for Expressions of Interest, notice for pre-qualification/ registration or any other notice inviting bids or proposals in any form, corrigenda there on

and details of bid awards on the web site of e tender wizard or any other portal as prescribed from time to time .

- (2) All the tenders/quotations shall be published on HPPCL portal. The tender will be hosted on <https://etender.wizard.gov.in> as per instructions time to time.
- (3) For New Works, the contractor has to first register himself through a registration procedure, as defined in the NIT.

b) INSTRUCTIONS FOR REGISTRATION OF Firms/Vendors:

Before registration, the Firms/Vendors must read the important information available at Register Page of HPPCL E-Tendering web Portal <https://www.tenderwizard.in/HPPCL>.

Firms/Vendors are required to register on HPPCL E-Tendering web Portal <https://www.tenderwizard.in/HPPCL> by using **Register** option on the Portal and after making requisite fee.

As part of the registration process, the Firms/Vendors will be required to choose a unique username and assign a password for their accounts.

Firms/Vendors are advised to register their valid e-mail address and mobile numbers as part of the registration process. These would be used for any communication from the HPPCL E-Tendering web Portal.

Upon registration, the Firms/Vendors will be required to register their valid Digital Signature Certificate (Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA (Controller of Certifying Authority), India.

Only one valid DSC should be registered by a Firms/Vendors. Please note that the Firms/Vendors are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.

Firms/Vendors then log in to the Portal through the secured log-in by entering their user ID/password and the password of the DSC/e-Token.

29. Electronic Reverse Auction*

Electronic reverse auction (RA) is a dynamic procurement method where the starting bid, bid decrement, auction duration, and automatic extension limits are disclosed beforehand. An e-Procurement eligibility step or PQB might precede the RA to select qualified bidders. During the RA, bidders compete to offer the lowest bid, and the lowest bid at the end wins. The procedure includes:

- i) The solicitation shall publish or communicate the invitation for RA as per e-procurement provisions.
- ii) The invitation shall include access and registration, opening and closing times, auction norms, and any relevant information.

During the RA, bidders submit lower bids iteratively, with the lowest bid at the end winning. The procedure includes:

1. The solicitation shall publish or communicate the invitation for RA as per e-

- procurement provisions.
- 2.** The invitation shall, in addition to the information as specific e-procurement, include details relating to:
- i.** Opening and closing of the auction.
 - ii.** Norms for the conduct of the auction.
 - iii.** Any other relevant information to the method of procurement
 - iv.** Preparation of Bid Documents, Publication, Receipt and opening of Bids
- * The e- RA shall be applicable where the provision of same exist in tender conditions.

SECTION-5

Contract Management

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Contract Management

Execution and Monitoring of Works and Quality Assurance

1. Execution and Monitoring of Work

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

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

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

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

1.3 Fulfilling the Conditions Precedent to Land Acquisition and Other Clearances and Permits: The process of land acquisition shall be started by the Procuring Entity, well ahead and completed entirely, or at least substantially, by the time the contract is awarded. The Procuring Entity shall also seek requisite Statutory Approvals/ Permission/ Clearances/ Certificates from the concerned Local Bodies & Statutory Authorities like District Authorities, Municipal Corporation, Panchayati Raj Institutions, Town Planning Board, Electricity Board/ Fire Department, State/ Central Pollution Control Boards, State/ Central Environmental Authorities, Forest and Wild-life authorities etc (for e.g. removal of trees, re-locating utilities; conversion of railway level crossings, laying of railway sidings needed by the project; rehabilitation and resettlement of persons affected by the project; traffic control; mining of earth and stone; interfering protected monuments; blasting permission, environmental/ forest/ wildlife clearances; and shifting of religious shrines etc), so that the progress of work is not impeded and incidence of delay claims by the contractor avoided. The Procuring Entity has to be aware that any delay in fulfilling the conditions precedent stipulated in the contract will attract delay claims from the contractor, besides causing time and cost overruns. Hence, all or most conditions precedent shall be fulfilled before award of the LoA. The contractor shall give all notices and obtain all other necessary permits and approvals as may be required for the construction of the contract works and shall pay for all such permits and approvals.

1.4 Commencement of Work: After signing the contract and issue of LoA, the engineer should instruct the contractor to 'commence the works', only after all the

above mentioned land availability, clearances and permits have been obtained. The contractor, within the 90 stipulated time, should submit to the engineer for his consent: (i) the work programme in such form and detail as the engineer reasonably prescribes; (ii) methods statement which the contractor proposes to adopt for execution of the works; and (iii) the quality assurance plan. The Procuring Entity should on being satisfied with Contractor's submission provide to the contractor total or partial possession of the site.

- 1.5 Approval of Quarries and Borrow Areas and Materials:** The contractor will obtain approval of the engineer for each quarry and borrow area to be used in the project, prior to commencement of quarrying and/ or borrow area excavation activities. All materials (whether natural, processed, manufactured, or designed) proposed by the contractor to be used on the works shall be first approved by the engineer to comply with the requirements of specifications.
- 1.6 Sub-contracting:** The works contract may provide for the contractor to get specified works executed from sub-contractors included in the pre-qualification application or later agreed to by the Procuring Entity, with a caveat that the responsibility for all sub-contract work rests with the prime contractor. Sub-contracting will generally be for specialized items of work, such as reinforced earth retaining walls, pre-stressing works, and so on. Procurement of material, hire of equipment or engagement of labour will not mean sub-contracting. The total value of sub-contracting work will not exceed the per cent of the contract price as specified in the contract (say 25 (twenty-five) percent). Sub-contracting by the contractor without the approval of the Procuring Entity shall be a breach of contract, unless explicitly permitted in the contract.
- 1.7 Safety at Work Site:** The Contractor must ensure safety of workmen as well as safety for the general public during construction in and around work-site. He must follow the laws, codes and standards laid down in this regard. The work-men must be trained and provided protective gear, life-saving equipment and appropriate tools for their jobs. Special precautions must be used if hazardous chemicals are used or stored at workplace (lead, silica, asbestos and wood/stone that will be cut and generate dust, construction materials containing zinc, cadmium, beryllium and mercury). Besides protection from noise and environmental pollution, public must also be safeguarded from falling through dug-up area, electrocution, flooding, falling objects, bridge-span dropping/ failures, crane falling/ overturning and damage to building from vibrations/ cave-ins from construction activities. Engineer must ensure that contractor does not adopt any short-cut in this regard. Most large contracts have a well defined Safety Health & Environment (SHE) guidelines embedded in the agreement. Appointment of site safety engineer by the contractor is a mandatory requirement in such cases. The engineer shall engage safety experts to carry out frequent SHE audits and mandate correct measures.
- 1.8 Progress Reporting & Review:** There should be a stipulation in the contract for large value works (magnitude to be specified), for the contractor to submit project specific monthly progress report of the work in a computerized form (Management Information System Reports– MIS reports). The progress report shall contain the following apart from whatever else may be required to be specified:
- i) Project information, giving the broad features of the contract.
 - ii) Introduction, giving a brief scope of the work under the contract and the broad structural or other details.

- iii) Construction schedule of the various components of the work, through a bar chart for the next three quarters for as may be specified, showing the milestones, targeted tasks and up to date progress.
- iv) Progress chart of the various components of the work that are planned and achieved, for the month as well as cumulative up to the month, with reasons for deviations, if any, in a tabular format.
- v) Plant and machinery statement, indicating those deployed in the work, and their working status.
- vi) Man-power statement, indicating individually the names of all the staff deployed in the work along with their designations.
- vii) Financial statement, indicating the broad details of all the running account payments received up to date, such as gross value of work done, advances taken, recoveries effected, amounts withheld, net payments, details of cheque payments received, etc.
- viii) A statement showing the extra and substituted items submitted by the contractor, and the payments received against them, broad details of the bank Guarantees, indicating clearly their validity periods, broad details of the insurance policies taken by the contractor, if any, the advances received and adjusted from the department, etc.
- ix) Progress photographs, in colour, of the various items/ components of the work done up to date, to indicate visually the actual progress of the work.
- x) Quality assurance and quality control tests conducted during the month, with the results thereof.
- xi) Any hold-up shall be specified.
- xii) Dispute, if any, shall also be highlighted.
- xiii) Monthly or fortnightly progress review by engineer and Procuring Entity with contractor may be necessary to ensure that contractor deploys sufficient resources to meet the deadlines.

2. Quality Assurance

- 2.1 In order to control the quality of work, a Quality Assurance Cell shall be formed in every work centre comprising of multi- disciplinary professionals/ engineers to cover all types of works, such as civil, mechanical, electrical etc.
- 2.2 In case of non-availability of qualified professionals/ engineers in house for the purpose of quality assurance cell, then the approval of competent authority shall have to be taken for deploying professionals from outside agencies. The provision for third party quality check may also be considered for a work beyond a specified amount.

3. Design Approvals

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

4. Time Monitoring

4.1 Time At Large

When the Procuring Entity does not explicitly express and reserve its rights and remedies under the contract for delays in execution, it legally forfeits his right to such remedies. Under such circumstances Time is said to become at large and the

contractor gets freed from his obligation to complete within the specified time. To avoid such a situation, before the expiry of originally stipulated date of completion, the Procuring Entity should extend the currency of the agreement and set a new time limit for completion and make the extended time as essence of the contract, stipulating that this is being done without prejudice to his right to recover damages and other remedies as per the contract.

4.2 Force Majeure (FM) Clause

Conditions beyond control of either parties like war, hostility, acts of public enemy, civil commotion, sabotage, serious loss or damage by fire, explosions, epidemics, strikes, lockouts or acts of God come under the legal concept of Force Majeure (FM). Delays in performance of contractual obligations under influence of FM conditions are condonable by the other party without any right to termination or damages, provided, notice of the happening of any such event is given by the affected party to the other within 30 (thirty) days from the date of occurrence. Works under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist. However if such event continue for a period exceeding 120 days, either party may at its option terminate the contract by giving notice to the other party.

4.3 Delays in Execution

- i) A work may be completed ahead of schedule or delayed due to unforeseen fortuitous circumstances, extra effort or developments beyond the control of the procuring entity or the tenderer and it is sometimes difficult to apportion credit or responsibility. The contractor may experience delay or disruption due to his own actions or inaction, those of his sub-contractor or other contractors, those of the procuring entity or the engineer, or other causes. Such delays expose the non-performing party to various sanctions under the contract. These sanctions include extension of time, damages or default termination of the contract. While examining the request of the contractor for extension of time, the engineer shall consider all circumstances and categorize the delays as follows:
 - a) **Excusable delays** - Force Majeure (FM), that is, acts of God, abnormal weather, floods, and so on, applies;
 - b) **Compensable delays** – or Compensation Events, which put full burden of responsibility on the Procuring Entity as covered in the GCC; and
 - c) **Inexcusable delay (contractor's own faults)**, which puts the full burden of responsibility on the contractor.
 - d) **Concurrent delays** - when two or more events responsible for delay overlap each other. The delays may be attributable to the Procuring Entity or the contractor or none, and fall in above categories. The eligibility for extension of time (EOT) should be determined by plotting each contributing concurrent delay on the critical path. The Procuring Entity should see that the concurrent delays do not result in unnecessary extra extension of time.
- ii) Once the delay is categorized, it should then be determined not only whether the contractor is eligible for time extension and/ or monetary relief but also whether sanctions, such as Liquidated Damage (LD) or default termination, can be imposed on the contractor.

4.4 Liquidated Damages and Incentives/ Bonus

Normally, tenders shall be invited with reference to a pre-determined period of completion of works. Provision of incentives for completion of work before schedule should be sparingly made after careful assessment of tangible benefits there from and disclosed in the tender documents in clear monetary terms. Incentives/ Bonus (e.g. one percent of the contract value per month subject to a maximum of five percent of contract value) for early completion and penalties for delay should, therefore, be built into the contract very judiciously. To avail of the incentive clause, it shall be mandatory on the part of the contractor to report the actual date of completion to the concerned Engineer (Engineer herein refers to PWO/ PSU/ Organisation to which work has been entrusted under Rule 133 of GFR 2017). The Engineer shall report the actual date of completion of the works as soon as possible through appropriate medium so that the report is received within seven days of such completion by the concerned Competent Authority. **Note:** Incentive Clause shall only be incorporated in such Contracts, from which, HPPCL is getting direct revenue.

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

4.5 Extension of Time (EOT)

- i) Extension of Time (EOT) must not be left to the end; it should be dealt with promptly during the progress of the contract and for ongoing critical delay interim EOT may be awarded. The engineer shall, after due consultation with the procuring entity and the contractor, determine the length of such extension and notify the contractor accordingly, with a copy to the procuring entity. After the final stage of completion is reached (final taking-over certificate issued), EOT and LD may be reviewed, if required.
- ii) If a compensation event occurs during the execution of the contract, the same shall be dealt with in terms of the GCC. The Engineer will assess whether and by how much the intended completion date shall be extended.
- iii) Responsible authorities 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.

5. Financial Monitoring

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

5.1 Variations/ Extra/ Substituted Items

- i) Variation means:** (a) increase or decrease in the quantity of any work included in the BOQ of the contract; (b) omission of any such work (but not if the omitted work is to be carried out by the procuring entity by another contractor); (c) change in the character or quality or kind of any such work; (d) change in the levels, lines, position and dimensions of any part of the works; (e) additional work of any kind necessary for the completion of the works; and (f) change of the specified sequence or timing of construction of any part of the works. The variation or additional work must be a necessary part within the scope of the original works and should not completely change the scope/ character and purpose of the original contract. The variation may result in additional or reduced payments to the contractor or there may be no price change at all. It is important to have a written procedure as part of the contract, for the issuing of a variation instruction. Once it is decided that a variation is required, the instruction should be issued promptly to minimize any adverse effect on the overall works. Before a variation can be instructed by the Engineer to the contractor, prior approval from the Procuring Entity is needed, except for certain situations as may be specified in SCC. The rate/ price/ valuation do not have to be agreed with the contractor, although this is preferable. Any change in 'approval for construction' drawings should be evaluated properly and their full financial implications worked out at that very stage for submission to the appropriate authority for approval. In case there are changes in ground levels from those shown in the approved drawings, they shall be agreed in writing, jointly by the contractor and engineer and reported to the Procuring Entity for considering whether any action lies against the design consultant for non-conformity of the levels as shown by him in the drawings and those actually obtaining.
- ii) Keeping Track of Variations/ Extra/ Substituted Items:** The variations register shall be used to administer and keep track of the status of a variation. Normally, the contractor has a tendency to report and claim positive variations (variations causing higher payments) and may not report negative variations. However, the engineer and Procuring Entity must keep track of such negative variations and issue timely letters. This shall cover the following important steps:
- a)** The Procuring Entity's prior approval of the issue of the variation instruction;
 - b)** The engineer's instruction to the contractor (this letter creates the variation). Particular details of a variation are not entered into the variations register until the day the instruction is issued. Prior to that it is only a 'proposed variation' and is tracked/ administered in a separate register;
 - c)** The variation instruction letter must be given a unique variation number and details entered into the variation register;
 - d)** The register is updated at the end of each month and summarised on one sheet as 'variation status', so that the involved agencies are aware as to what work needing action is held up with each of them; and
 - e)** The financial implications are kept up to date.
- iii) Valuation of Variations:** While taking decision with regards to variations a balance should be maintained between the perceived risks in quick finalisation of variations against the opportunity costs of delayed decision making e.g.

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

- a) To form an opinion as to the applicability of the rates in BOQ and if considered applicable, to use BOQ rates;
- b) If not considered applicable, to use BOQ rates as the basis for valuation;
- c) In the event of a disagreement, to consult with procuring entity and contractor to try and agree on suitable rates; this means developing new rates from first principles;
- d) If there is disagreement, to fix the appropriate rate; and
- e) To determine provisional rates to allow monthly certification.

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

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

5.2 Measurement and Payment

- i) Measurements of all items having financial value shall be recorded in Measurement books (MB) and/ or level field books so that a complete record is obtained of all works performed under the contract. Measurements and levels shall be taken jointly by the official designated for the purpose and the contractor. Electronic Management Books (e-MBs): HPPCL is in process of implementing e- MBs and same should be integrated with IT based project monitoring system.
- ii) Interim Payments: At a prearranged date each month, the contractor will submit a statement in such a form as the engineer from time to time prescribes showing the amounts to which the contractor considers himself entitled up to the end of the month. The engineer's would issue an Interim Payment Certificate (IPC) after following checks:
 - a) Quantity of work actually completed as of an agreed 'cut-off' date;
 - b) Reconciliation with Field measurements of quantities of work completed or claimed;

- c) Inventory of equipment and materials delivered to the site but not yet used in the work (materials on site);
 - d) Review of claims for extra work;
 - e) Checking of retention amount and other recoveries;
 - f) Review of variations - whether these have been approved by Procuring Entity. If not, provisional rates are to be used until final valuation sanctioned by Procuring Entity; and
 - g) Price adjustments;
 - h) Following the bills filed by the contractor, Interim monthly payments (net of: (i) retentions and recovery of advances; and (ii) statutory deductions (works tax, income tax, others) would be made based on IPC. The engineer will not be bound to certify any payment if the net amount thereof, after all retentions and deductions, is less than the minimum amount of IPC, if any, specified in the contract.
- iii) As cash flow is a critical requirement in a project, payments delays impact the speed of construction and also the future bid value as this is factored into the bid by way of an increase in interest carry cost. Expenditure Management Committee constituted by Government of India (headed by Dr. Bimal Jalan, eminent economist and public policy experts) in its report has endorsed (recommendation no. 7644) the practice of releasing a specified proportion (say Seventy-five percent - 75%) of the running milestone payments, within a week of the bill being submitted, pending a detailed check on the claim, in large projects. The balance is to be released after the claims are scrutinized in detail as per procedure. If required an enabling provision may be incorporated in the Conditions of Contract, possibly with stringent penalties in case of misuse of this provision. In this regards the committee had reported that Delhi Metro Rail Corporation (DMRC) has instituted such a system and it is stated to have helped in getting both a speedier execution and more competitive bids.
- iv) Final bill shall be submitted by the contractor in same manner as that in interim bills within a specified time of physical completion of work and of final certificate of completion furnished by the Department/ Ministry. Payment shall then be made after verification of the bill on the personal certificate of the officer-in-charge of execution of the work in the format given below:
"I Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry."
- v) **Delay in payment to the contractors**
 - a. "Delay in eligible payments to contractors leads to delay in execution of projects, cost overruns and disputes. Hence, ad-hoc payments of not less than 75% of eligible running account bill/ due stage payment, shall be made within 45 working days of the submission of the bill. This period of 45 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 45 working days of submission of bill by the contractor."

- b. “Public authorities may put in place a provision for payment of interest in case of delayed payment of bills by more than 45 working days after submission of bill by the contractor. Where interest is to be paid, the rate of interest should be the lending rate of SBI.”
- c. Project executing authorities should have a system to monitor delays in payments and to identify such unwarranted delays.
- d) The final bill should also be paid to the contractor within three months after completion of work.
- e) All project executing authorities implementing works contracts involving aggregate payments of more than Rs.100 crore per annum shall have an online system for monitoring of the bills submitted by contractors. Such system shall have the facility for contractors to track the status of their bills. It shall be mandatory for all contractors bills to be entered into the system with date of submission and date of payment. Such system shall be put in place within one year of issue of these instructions.)

Note: In para 5.2 (v) instructions containing “shall” are mandatory; any deviation from these Instructions shall require relaxation from Ministry of Finance (for Ministries/ Departments etc.) or from the Board of Directors (for Central Public Sector Enterprises).

5.3 Mobilization Advance

- i) “If considered justified in certain specialized and capital intensive works, Contract may provide for an interest-bearing mobilization advance to be paid to the contractor exclusively for the costs of mobilization at 10 (ten) per cent of the contract price on the provision by the contractor of an unconditional BG (should be for an amount of One Hundred Ten per cent (110%)) in respect of the advance. Such BGs shall remain effective until the advance payment has been fully repaid, but the amount thereof shall be progressively reduced by the amount repaid by the contractor, as indicated in the interim payment certificates.”
- ii) “The aforesaid advance of 10 (ten) per cent may be paid in two installments, each of five per cent. The first one may be paid on commencement of the work and provision by the contractor of the unconditional BG (should be for an amount of One Hundred Ten per cent (110%)) in respect of the advance. The second installment may be paid on certification by the engineer of the contractor's having achieved a financial progress of 10 (ten) per cent of the contract price, as also provision of a BG by the contractor for this part of the advance. Mobilization expenditure mentioned herein shall not include the margin money and bank commission, and so on, paid by the contractor for procurement of BGs against performance security and mobilization advance.”

- iii) Provision of mobilization advance should essentially be need-based. Suitable delegation of authority may be done in the Organisation to take decision for grant of the mobilisation advance, whether interest free or interest bearing.
- iv) Though the Commission does not encourage interest free mobilization advance, but, if the Management feels it necessity in specific cases then it should be clearly stipulated in the tender document and its recovery should be time based not linked with progress of work. This would ensure that even if the contractor is not executing the work or executing it at a slow pace, recovery of advance could commence and scope for misuse of such advance could be reduced.
- v) “Part ‘Bank Guarantees’ (BGs) against the mobilization advance should be taken in as many numbers as the proposed recovery installments and should be equivalent to the One Hundred Ten per cent (110%) amount of each installment. This would ensure that at any point of time even if the contractor’s money on account of work done is not available with the organization, recovery of such advance could be ensured by encashing the BG for the work supposed to be completed within a particular period of time.”
- vi) There should be a clear stipulation of interest to be charged on delayed recoveries either due to the late submission of bill by the contractor or any other reason besides the reason giving rise to the encashment of BG, as stated above.
- vii) The amount of mobilization advance, interest to be charged, if any; its recovery schedule and any other relevant detail should be explicitly stipulated in the tendered document upfront.
- viii) Relevant format for BG should be provided in the tender document, which should be enforced strictly and authenticity of such BGs should also be invariably verified from the issuing bank, confidentially and independently by the organization.
- ix) “In case of ‘Machinery and Equipment advance’, insurance and hypothecation to the employer should be ensured.”
- x) Utilization certificate from the contractor for the mob advance should be obtained. Preferably, mob adv should be given in installments and subsequent installments should be released after getting satisfactory utilization certificate from the contractor for the earlier installment.

5.4 Plant, Machinery and shuttering Material Advance

Another interest-bearing advance of five per cent of the contract price, depending on the merits of the case, may be paid against the new key construction equipment purchased for the work and brought to the site, if so provided in the Bid Documents and so requested by the contractor. The advance should normally not be more than 50 (fifty) percent of the depreciated cost of such plants and machinery should be hypothecated to the Govt., before the payment of advance is released. This advance shall be subject to the following conditions: (i) the contractor shall produce satisfactory proof of payment; (ii) such equipment is considered necessary by the

engineer for the works; (iii) the equipment has been verified to have been brought to site; (iv) the contractor gives an undertaking on stamp paper that the equipment will work only on that job and will not be removed from the site without obtaining written approval from the engineer; and (v) the contractor furnishes a BG to cover the advance. No advance shall be admissible on equipment purchased under a hire purchase scheme/ financing arrangement or on hired equipment.

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

The repayment of advances shall be done through proportionate percentage deductions from running bill (periodic/ interim payment). The time of commencement of repayment, rate of deductions from interim payments, and time by which the advance should be fully repaid will be as specified in the contract.

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

5.5 Secured Advance against Material brought to Site

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

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

The advance will be repaid from each succeeding running bill (periodic/ interim payment) to the extent materials for which advance has been previously paid have been incorporated into the works. In all cases, the repayment of the advance will be affected after expiry of a period of 120 days since payment of advance, whether the material is consumed in the work or not.

5.6 Price Variation

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

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

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

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

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

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

Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date. It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.

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

The following are important elements of PVC:

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

- b)** The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of Contractor).
- c)** The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
- d)** Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
- e)** Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
- f)** No upward price variation will be admissible beyond the original scheduled completion date for defaults on the part of the supplier. However, a downward price variation would be availed by the employer as per the denial clause in the letter of extension of the construction period;
- g)** Price variation may be allowed beyond the original scheduled completion date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;
- h)** Where contract execution depends on imported (subject to customs duty and foreign exchange fluctuations) and/or locally sourced goods/ works/ services (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i)** The clause should also contain the mode and terms of payment of the price variation admissible; and
- j)** The procuring entity should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him.
- k)** Care should be exercised in contracts providing for price variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the contractors, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:
"It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate."
- l)** Notwithstanding the above formalities, it should be appreciated that it is in the interest of the procuring entity to be vigilant about downward variation and it is, therefore, the basic responsibility of the procuring entity to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

6. Commissioning and Documentation

6.1 When the work has been executed, the assets created shall be commissioned.

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

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

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

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

6.5 On completion of the work, a Project Completion Report (PCR) shall be submitted by The Contractor duly bringing out the Final Project Completion Cost, Total Time period taken to complete the work and also completed Project Components as against the approved Cost, Time and Project Components. The PCR shall be submitted along with Final Project Accounts including return of unspent balance amount within one month of settlement of final bills of the contractors/ other agencies deployed on the work.

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

7. Closure of Contract

7.1 Completion of Contract

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

7.2 Material and Works Reconciliation

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

7.3 Reconciliation with the User Department

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

- i)** Achievement of performance standards of Work;
- ii)** Installation and commissioning, if any;
- iii)** Support service during the Defect Liability Period which has ended on ____;
- iv)** As Made Drawings;
- v)** Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor.

7.4 Payment Reconciliation

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

- i)** LD;
- ii)** Price reduction enforced on account of shortfall in standards of Work;
- iii)** Variations/ deviations from the scope of the contract;
- iv)** Overpayments/ duplicate payments, if any;
- v)** Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- vi)** Demurrage, insurance premiums or claims, and so on;
- vii)** Works reconciliation;
- viii)** Price variations;
- ix)** Statutory duties paid on behalf of the contractor by Procuring Entity; and
On satisfactory reconciliation and against a "no claim certificate" from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

8. Dispute Resolution Mechanism

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

8.2 If a dispute of any kind, whatsoever, arises between the procuring entity and contractor in connection with or arising out of the contract or the execution of the

works, whether during the execution of the works or after their completion and whether before or after the repudiation or termination of the contract, including any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or valuation of the Engineer; the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board.

9. Conciliation

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

10. Arbitration

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

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

10.1 Arbitration and dispute resolution

- i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against HPPCL, 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 HPPCL.

- iii) The Organization should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration/ court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
- iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher. This results in huge financial losses to the corporation. 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 by state Govt./GoI, but have not been fully complied with.
- v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity.

10.2 Arbitration Award(s)

All the Arbitral awards shall be dealt in accordance with Arbitration and Conciliation Act 1996, and its subsequent amendments.

11. Breach of Contract, Remedies and Termination

11.1 Breach of Contract

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

If termination takes place because of a fundamental breach/ insolvency on the part of the contractor, the engineer shall issue a certificate for the value of work done, deducting from the amounts in respect of: (i) advance payments; (ii) any

recoveries; (iii) taxes as due; and (iv) percentage to apply to the work not completed as indicated in the contract data. If the total amount due to the procuring entity exceeds that due to the contractor, the difference will be a debt payable to the procuring entity. The Competent Authority may terminate a contract in the following cases.

The Procuring Entity is then free to take over the site and complete the works himself or with another contractor and use the contractor's materials, equipment, temporary works as he/ they think proper.

11.2 Cancellation of Contract for Default

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

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

11.3 Termination of Contract for Insolvency

If the contractor becomes bankrupt or becomes otherwise insolvent or undergoes liquidation or loses substantially the technical or financial capability (based on which he was selected for award of contract), at any time, the contract may be terminated, by giving a written notice to the contractor, without compensation to

the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to Procuring Entity.

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

After placement of the contract, there may be an unforeseen situation compelling Procuring Entity to cancel the contract. In such a case, a suitable notice has to be sent to the contractor for cancellation of the contract, in whole or in part, for its (Procuring Entity's) convenience, inter alia, indicating the date with effect from which the termination will become effective.

This is not Procuring Entity's legal right– the contractor has to be persuaded to acquiesce. Depending on the merits of the case, the contractor may have to be suitably compensated on mutually agreed terms for terminating the contract. Suitable provisions to this effect should be incorporated in the tender document as well as in the resultant contract. If termination occurs because of Procuring Entity's convenience or a fundamental breach on his part, the engineer will certify the value of works executed, value of any materials lying at site, reasonable cost of removal of equipment, repatriation of project staff, cost of protecting and securing the works and deducting from it: (i) pending advances; (ii) other recoveries; and (iii) taxes as due.

SECTION-6

Contract Forms

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Invitation for Bids (ICB/NCB)

Date:

IFB No.:

1. The Himachal Pradesh Power Corporation Ltd. invites sealed bids from eligible bidders for the “___*Name of Tender*___”. International competitive bidding/National Competitive Bidding will be conducted in accordance with the Single Stage One Envelope/Single Stage Two Envelope Bidding Procedure.
2. Interested eligible bidders may contact___*Officer Conducting Bidding*___ to obtain further information and inspect the bidding documents at the following address:

3. A complete set of bidding documents may be purchased by interested bidders on the submission of a written application at the above address and upon payment of a non-refundable fee of INR _____through demand draft in favour of H.P Power Corporation Ltd. payable at Shimla (H.P) starting from dd.mm.yyyy.
4. A pre-bid conference will be held on **dd.mm.yyyy** at ___AM/PM in the _____.
5. Bids must be delivered to the above office on or before ___AM/PM on **dd.mm.yyyy** and must be accompanied by Bid Security of INR _____ (**INR___in words**).
6. Bids will be opened in the presence of bidders’ representatives who choose to attend at ___AM/PM on **dd.mm.yyyy** at the address above.
7. The HPPCL will not be responsible for costs or expenses incurred by bidders in connection with the delivery or preparation of bids.
8. The HPPCL reserves the right to accept or reject any bid or reject all bids and to annul the bidding process, without assigning any reason thereto.

-sd/-

**Officer Conducting Bidding
(with address)**

Bid Submission Sheet

Date: _____
Invitation for Bid No.: _____
Alternative No.: _____

To

Address of Employer (Inviting Bid)

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda No.: _____;
- (b) We offer to Execute the Work/ Supply in conformity with the Bidding Document and in accordance with the schedule specified in the Tender Documents.
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: _____
- (d) The discounts offered and the methodology for their application are: _____
- (e) Our Bid shall be valid for a period of 180 days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our Bid is accepted, we commit to obtain a Performance Security in the amount specified in the Tender Document (10% percent of the total Price) with in (time specified in tender document).
- (g) We are not participating, as Bidders, in more than one Bid in this bidding process, other than alternative offers in accordance with the Bidding Document;
- (h) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal Contract is prepared and executed.
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____
In the capacity of _____
Signed _____
Duly authorized to sign the Bid for and on behalf of _____
Date _____

Notification of Award - Letter of Acceptance

To:

Address of contractor/ supplier shortlisted as L-1

This is to notify you that your Bid dated _____ for execution of the _____ for the Contract Price in the aggregate of _____, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by us.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Contract Forms, of the Bidding Document

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Purchaser”), of the one part, and _____ of _____ (hereinafter “the Contractor/ Supplier”), of the other part:

WHEREAS the Employer/Purchaser invited bids for certain Goods and Related Services, viz., _____ and has accepted a Bid by the Contractor/ Supplier for the work(s) i.e (name of work), supply of Goods (name) and Related Services etc. in the sum of _____ (hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - a) the Employer/Purchaser’s Notification to the Contractor/Supplier of Award of Contract;
 - b) the Bid Submission Sheet and the Price Schedules submitted by the Contractor/ Supplier;
 - c) the Special Conditions of Contract;
 - d) the General Conditions of Contract;
 - e) the Construction/Completion Schedule of Work;
 - f) the Bill of Quantities
 - g) the Technical Specifications & Specification Drawings, if any.
 - h) the approved Environmental Social Health & Safety (ESHS) Plan, if any.
 - i) The Contractor’s Bid and any other document(s), forming part of the contract

This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by the Employer/Purchaser to the Contractor/ Supplier as indicated in this Agreement, the Contractor/ Supplier hereby covenants with the Employer/Purchaser to complete the work(s), provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer/ Purchaser hereby covenants to pay the Contractor/Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year indicated above.

Signed by _____ (for the Employer/Purchaser)

Signed by _____ (for the Contractor/Supplier)

Performance Security Form – Bank Guarantee

.....*Bank's Name and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Employer*.....

Date: _____

PERFORMANCE GUARANTEE No.: _____

We have been informed that _____ (hereinafter called “the Contractor”) has entered into Contract No. _____ dated _____ with you, for the execution of _____ (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (___), upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than sixty days from the date of issuance of the Certificate of Completion/Acceptance Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the ____ day of ____, 2__, which ever occurs first.

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s) name of bank or financial institution]

Bank Guarantee Form for Advance Payment

.....*Bank's Name and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Employer*.....

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with you, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ (_____) is to be made against an advance payment guarantee.

At the request of the Contractor, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than toward the execution of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on his account number _____ at _____.

The maximum amount of this guarantee is valid shall be progressively reduced in proportion to the value of each part-shipment or part-delivery of plant and equipment to the site, as indicated in copies of the relevant shipping and delivery documents that shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Contractor of the amount of the advance payment, or on the ___ day of ____, 2__, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s) name of bank or financial institution]

Form of Bid Security (Bank Guarantee)

.....*Bank's Name and Address of Issuing Branch or Office*.....

Beneficiary:*Name and Address of Employer*.....

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we _____ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid or any extension thereto provided by the Applicant; or
- b) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) forty-five days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

[signature(s) name of bank or financial institution]