



## Himachal Pradesh Power Corporation Ltd.

(A State Govt. Undertaking)

Electrical Cell, Himfed Building, BCS, Shimla, H.P.-171009,  
Tel.: 0177-2671899, Email: [gm\\_elect@hppcl.gov.in](mailto:gm_elect@hppcl.gov.in), Website: [www.hppcl.gov.in](http://www.hppcl.gov.in)

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### **"Office Order"**

Himachal Pradesh Power Corporation Limited (HPPCL) was incorporated in December 2006 under the Companies Act 1956, with the objective to plan, promote and organize the development of all aspects of hydroelectric power on behalf of Himachal Pradesh State Government (GoHP).

The Procurement of goods forms an integral part for execution and operation of projects. In order to ensure that procurement is made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of suppliers, the necessity to have a Procurement Manual was felt. In view of the above, it was envisaged by the management of HPPCL that a Procurement Manual (Goods) of HPPCL may be formulated and should be used in all the offices of HPPCL.

Accordingly, **Procurement Manual (Goods) of HPPCL** have been prepared after considering the suggestions made by various functionaries and also considering latest procurement guidelines/manuals in identical utilities of the state and Centre Governments. The document shall be used, keeping in view the "Concept, Intent & Purpose and Standards (Canons) of Financial Propriety" provided in Section I. Further, 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.

**-Sd/-**

**General Manager (Electrical)**

No. HPPCL/EC/Proc. Manual/2018-9885-9910

Dated: 26.07.2018

Copy of the office order along with Procurement Manual (Goods) 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 (Electrical) / Director (Personnel) / Director (Finance) / Director (Civil) H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for kind information please.



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3. The General Manager (Civil Contracts)/ General Manager (Generation)/ General Manager (Corporate Planning & Monitoring), H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for information and necessary action please.
4. The General Manager (Designs)/ Dy. General Manager (ED-I)/ Dy. General Manager (ED-II), 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.
7. The Addl. General Manager (Finance)/ Dy. General Manager (Electrical Contracts)/ Dy. General Manager (P&A)/ Land Acquisition Officer/Sr. Manager (Law)/ Sr. Manager (IT)/AE (Estate), H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for information and necessary action please.
8. The Sr. Manager (IT), H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for uploading the Procurement Manual (Goods) of HPPCL on HPPCL website.
9. Library, H.P.P.C.L., Himfed Building, BCS, Shimla, HP-171009 for record please.

**DA: - As above**

**-Sd/-**

**General Manager (Electrical)**



**Himachal Pradesh Power Corporation Limited**  
**(Govt. of H.P. Undertaking)**

**PROCUREMENT MANUAL**  
**(GOODS)**

**2018**

## **C o n t e n t s**

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Section 2:	Requisition for procurement.
Section 3:	Procurement procedure
Section 4:	Contract Management
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## **SECTION 1**

### **Concept, Intent & Purpose**

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## Concept, Intent & Purpose

1. **Aim:** This Procurement Document has been prepared to ensure that procurements are made by following a uniform, systematic, efficient and cost-effective procedure and also to ensure fair and equitable treatment of suppliers. There are statutory provisions, rules, financial, vigilance, security, safety, counter-trade and other regulations; orders and guidelines of the Government on the subject of public procurement which provide framework for the public procurement system.
2. **Legislations:** The Indian Contract Act, 1872 and the Sale of Goods Act, 1930 are major legislations governing contracts of sale/purchase of goods in general. There are other mercantile laws (Arbitration and Conciliation Act, 1996; Competition Act, 2002; Information Technology Act, 2000 etc), which may be attracted in Procurement Transactions.
3. **Basic aim of procurement:** In every procurement, public or private, the basic aim is to achieve just the right balance between costs and requirements concerning the following five parameters called the Five R's of procurement. The entire process of procurement (from the time the need for an item, facility or services is identified till the need is satisfied) is designed to achieve such a right balance. The word 'right' is used in the sense of 'optimal balance'.
  - a. **Right Quality:** Procurement aims to buy just the right quality that will suit the needs – no more and no less – with clear specification of the Procuring Entity's requirements, proper understanding of functional value and cost, understanding of the bidder's quality system and quality awareness. The concept of the right balance of quality can be further refined to the concept of utility/value. For the Right Quality, Technical Specification is the most vital ingredient. In public procurement, it is essential to give due consideration to Value for Money while benchmarking the specification.
  - b. **Right Quantity:** There are extra costs and systemic overheads involved with both procuring a requirement too frequently in small quantities or with buying large quantities for prolonged use. Hence, the right quantity should be procured (in appropriate size of contract) which balances extra costs associated with larger and smaller quantities.
  - c. **Right Price:** It is not correct to aim at the cheapest materials/facilities/services available. The price should be just right for the quality, quantity and other factors involved (or should not be abnormally low for a facilities/works/services which could lead to a situation of non-performance or failure of contract). The concept of price can be refined further to take into account not only the initial price paid for the requirement but also other costs such as maintenance costs, operational costs and disposal costs.
  - d. **Right Time and Place:** If the material (or facility or services) is needed by an organisation in three months' time, it will be costly to procure it too late or too early. Similarly, if the vendor delivers the materials/facilities/services in another city, extra time and money would be involved in logistics. An unrealistic time schedule for completion of a facility may lead to delays, claims and disputes.
  - a. **Right Source:** Similarly, the source of delivery of Goods, Works and Services of the requirement must have just right financial capacity and technical capability for our needs (demonstrated through satisfactory past performance of contracts of same or similar nature). Buying a few packets of printer paper directly from a large

manufacturer may not be the right strategy. On the other hand, if our requirements are very large, buying such requirements through dealers or middlemen may also not be right.

#### **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. Disclaimer:** 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.



## **SECTION 2**

### Requisition of Procurement

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## Requisition of Procurement

- 1. General:** As a general rule, all the major procurement for corporation will be made by the Corporate procurement Cells. However for local purchase at project site(s), other officers shall enjoy such powers as delegated to them by the corporation and the same shall be exercised by them as demanded by each occasion and in the interest of the works.
- 2. Preparation of Indents:**
  - i. Calculations/Specifications and/or particulars given in the indents must be clear & complete and must be accompanied with all drawings, models and samples. An accurate, complete & comprehensive information of the demand should be provided so that difficulty is not experienced at the time of filling specifications in the Notice Inviting Tender/Purchase Order/Contract agreement.
  - ii. Whenever the quantity of materials indented for, is in excess of quantity used during either of two preceding half years, a clear explanation in support of such increase in demand should be furnished in the remarks column.
  - iii. The maximum and minimum limits proposed for each item of store should be taken into account and, in no case, should quantities, in excess of maximum limits, be intended for.
  - iv. The quantities indented should be limited to the barest minimum essential for satisfactory and efficient working.
  - v. As far as possible, separate indents should be prepared for each category of material.
  - vi. A definite date, by which delivery of stores is required should be given. Even for urgent and immediate indents, it will not suffice to mark 'Urgent' and Immediate' but a definite date by which material is required should be given.
  - vii. Complete despatch instructions should be given.
  - viii. The name of the officers to whom the bills etc. should be sent for payment, should be given along with the name of the respective bankers.
  - ix. The head of account, to which the cost will be chargeable, should be indicated.
  - x. Certificate to the effect that budget provisions exist should be given.
  - xi. The following information should also be furnished with the indents.
    - a) Quantities available in stock.
    - b) Quantities on order.
    - c) Quantities indented for.
    - d) Consumption during the preceding 12 months as per stock issue register.
- 3. Submission of Indents:** The procurement shall be made on the basis of indents received from various quarters by the corporate procurement cell(s).
- 4. Scrutiny of Indents:** The indents received from the project site office(s) shall be scrutinized in the corporate procurement cell(s) with the statement of surplus materials which shall be obtained from all the stores quarterly. This consolidated statement shall be checked independently, by one of the officer(s) working in the corporate procurement cell(s) to ensure that the indents are no way excessive and that they have been prepared strictly in conformity with the directions contained in these regulations.

## **SECTION 3**

### Procurement Procedure

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# Procurement Procedure

## 1. 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 supplies, or eligible bidders, or to all pre-qualified bidders, or
- (ii) through open press advertisement in local, regional and national newspapers for supplies with estimated cost more than Rs. 2 crore and in local, regional and/or national newspapers for supplies 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 supplies 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.

**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:

- (i) for requirements of less than Rs. 20 lakh, or
- (ii) in respect of requirement over Rs. 20 lakh for any valid and justified reason(s) to be recorded, and
- (iii) to not less than four vendors, selected from the vendor 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.

**iii. Single Tender:**

- a. Single tender enquiries, resorted to in cases of urgency/ single source availability/ specialized job/ negotiated supply 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, supply orders may be placed without call of tenders. The negotiated supply 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.

**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.**

**2. 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.

**3. 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. 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 place or places of delivery;
  - 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 supplier's eligibility to receive such a Government contract/supply orders. The qualification criteria should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/Environment Management System and so on);
  - d) There are no such qualifications for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods;
  - e) The procedure as well as date, time and place for obtaining, submitting and opening of the bids;
  - f) Terms of delivery/completion;
  - g) 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;
  - h) 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";
  - i) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document;
  - j) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws

**iii. 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.

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. Information 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.

**iii) Amendment of Tender Documents**

At any time prior to the date of submission of bids, the purchaser may, whether at his own initiative or in response to a clarification sought by a prospective bidder, amend bid documents by issuing a corrigendum. The corrigendum shall be notified in writing by registered post/speed post/courier/email to all known prospective bidders. Copies of such amendments are also to be prominently attached in the unsold sets of the tender documents (which are available for sale), including the tender documents uploaded on the website. When the amendment/modification changes the requirement significantly and /or when there is not much time left for the tenderers to respond to such amendments, and prepare a revised tender, the time and date of submission of tenders are also to be extended suitably, along with suitable changes in the corresponding timeframes for receipt of the tender, tender validity period, and so on, and validity period of the corresponding EMD/bid security. Depending on the situation, such an amendment may also need fresh publication adopting the same procedure as for publication of the original tender enquiry.

**iv) Bid Validity**

A bid shall remain valid for the period mentioned in the ITB (normally 75(seventy five) days for OTE and 90 (ninety) days for GTE). In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

**v) Sealing and Marking of Tenders**

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

**vi) Withdrawal, Substitution and Modification of Tenders**

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders in writing without forfeiture of Bid Security/EMD, provided these are received duly sealed and marked like the original tender, up to the date and time of receipt of the tender. Any

such request received after the prescribed date and time of receipt of tenders will not be considered. No bid may be withdrawn in the interval between the deadline for submission of bids and expiration of the period of bid validity. Withdrawal of a bid during this period will result in forfeiture of the bidder's bid security (EMD) and other sanctions.

**vii) Eligibility/Evaluation/Qualification Criteria**

If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB or as a separate section of the tender document. The bidder has to ensure that he provides convincing proof of having fulfilled these criteria. *Any criteria not specified in the tender cannot be used for evaluation or qualification.*

The condition of prior turnover and prior experience may be relaxed for Start-ups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document.

**viii) OEM /Authorised Dealer/Agents of Supplier**

Except in case of Commercially-Off-the-Shelf (COTS) items, when a firm sends quotation for an item manufactured by some different company, the firm is also required to attach, in its quotation, the manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product as per formats given in SBD. This is necessary to ensure quotation from a responsible party offering genuine product, also backed by a warranty obligation from the concerned manufacturer. In the tender, either the manufacturer or its authorised dealer can be considered as valid bidders.

In case of large contracts, especially capital equipment, the manufacturer's authorisation must be insisted upon on a tender specific basis, not general authorisation/dealership, by so declaring in the bid documents clearly.

In cases where the manufacturer has submitted the bid, the bids of its authorised dealer will not be considered and EMD will be returned.

And in case of violations, both infringing bids will be rejected.

**ix) Conflict of Interest among Bidders/Agents**

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

- a) they have controlling partner (s) in common; or
- b) they receive or have received any direct or indirect subsidy/financial stake from any of them; or
- c) they have the same legal representative/agent for purposes of this bid; or

d) they have relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder; or

e) bidder participates in more than one bid in this bidding process. Participation by a bidder in more than one Bid will result in the disqualification of all bids in which the parties are involved. However, this does not limit the inclusion of the components/sub-assembly/assemblies from one bidding manufacturer in more than one bid.

f) in cases of agents quoting in offshore procurements, on behalf of their principal manufacturers, one agent cannot represent two manufacturers or quote on their behalf in a particular tender enquiry. One manufacturer can also authorise only one agent/dealer. There can be only one bid from the following:

1. The principal manufacturer directly or through one Indian agent on his behalf; and
2. Indian/foreign agent on behalf of only one principal.

g) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the contract that is the subject of the Bid;

h) in case of a holding company having more than one independently manufacturing units, or more than one unit having common business ownership/management, only one unit should quote. Similar restrictions would apply to closely related sister companies. Bidders must proactively declare such sister/common business/management units in same/similar line of business.

**x) Schedule of Requirements**

This section comprises the list of goods and delivery schedule. If there is no separate TS, then TS, quality assurance and inspections may also be included here. If the tender contains a number of schedules of requirements, it must be clarified, whether evaluation of eligibility/qualifications/financial bids would be on a schedule by schedule basis or on the basis of a total of all schedules put together.

**xi) Quotation Received from Dealers/Agents for Items not Manufactured by Them**

When a firm sends a quotation for an item manufactured by a different company, the firm is also required to attach in its quotation that manufacturer's authorisation certificate and also manufacturer's confirmation of extending the required warranty for that product (in addition to the tenderers' confirmation to the required warranty). If the firm is an authorised agent/dealer of that manufacturer, certified documentary evidence to this effect is to be attached along with the quotation. This is necessary to ensure a quotation from a responsible party offering the genuine product, also backed by a warranty obligation from the concerned manufacturer.

**c. Conditions of the Contract**

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.

**4. 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 organisation 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.

**5. Pre-bid Conference**

In case of turnkey contract (s) and facilities of a special nature for procurement of sophisticated and costly equipment, 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 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, the technocommercial 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.



**6. 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 suppliers by registered/speed post/courier/e-mail 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, 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.

**7. Sealing and marking of bids by bidders**

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 purchaser 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.

**8. Submission, Receipt and Custody of Tenders**

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 by courier shall be deposited in the tender box by the Dispatch Section till the date and time of bid opening. Bids sent by telex, cable or facsimile are to be ignored and rejected.; and
- iii. For bulky/oversized bids which cannot be dropped into tender boxes, the officials authorised to receive such bids shall maintain proper records and provide a signed receipt with date and time to the bearer of the bid. He will also sign on the cover, duly indicating the date and time of receipt of the tender(s). Names and designations of at least two such authorised officers should be mentioned in the bid documents

#### **9. Withdraw/Amendments/Modifications to Bids by Bidders**

The tenderer, after submitting its tender, is permitted to withdraw/alter/modify its tender so long such withdrawal/alterations/modifications are received duly sealed and marked like original tender, upto the date & time of receipt of tender. Any withdrawal/amendment/modification received after the prescribed date & time of receipt of tenders are not to be considered.

#### **10. Procedures to be followed during Bid Opening**

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 goods, quoted price, terms of delivery, delivery period, discount, if any, whether EMD furnished or not, and any other special feature of the tender for the information of the representatives attending the tender opening. No clarifications by tenderers should be entertained or allowed to be recorded during the bid opening. It should be understood that BOC has no authority to reject any tender at the tender opening stage;
- 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 purchase officer and an acknowledgement obtained for him.

## **11. 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. The amount of Bid Security should generally be between one to two per cent of the estimated value of the goods 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 foreign bidders in tenders it may be in the form of an irrevocable bank guarantee issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on, safe guarding the purchaser's interest in all respects. The Bid Security is normally to remain valid for a period of 45 (Forty-Five) 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 30th day after the award of the contract. Bid Security should be refunded to the successful bidder on receipt of a performance security.

## **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 account payee demand draft, fixed deposit receipt from a commercial bank, bank guarantee issued/confirmed from any of the 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 supplier, 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 warranty 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. Warranty Bank Guarantee**

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

**iv. Verification of Bank Guarantees**

Bank guarantees submitted by the tenderers/suppliers as EMD/Performance securities need to be immediately verified from the issuing bank before acceptance. There may not be any need to get the Bank Guarantee vetted from legal/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.

**v. 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.

**12. Terms of Payment:**

**a.** Where goods to be supplied also need installation and commissioning by the supplier, the payment terms may be:

- i) For a contract with terms of delivery as FOR destination/delivery at site -- 90 (ninety) per cent on receipt and acceptance of goods by the consignee at destination and on production of all required documents by the supplier and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee.
- ii) For a contract with terms of delivery as FOR dispatching station -- 50 (sixty) per cent on proof of dispatch along with other specified documents, 40 (thirty) per cent on receipt of the goods at site by the consignee and balance 10 (ten) per cent on successful installation and commissioning and acceptance by the consignee; and

**b. Modes of Payment:**

Payments to domestic suppliers are usually made by cheque/demand draft drawn on a Government treasury or branch of RBI or any Scheduled Commercial Bank authorised by RBI for transacting Government business. Such payment can also be made to the supplier's bank, if the bills are endorsed in favour of the bank with a pre-receipt embossed on the bills with the words, "received payment" and both the endorsement and pre-receipt are authenticated by the supplier. In addition, an irrevocable power of attorney is to be granted by the supplier in favour of the bank. In such of those cases where

there has been global tendering, in order to have uniform payment clauses, if domestic suppliers, especially against high value contracts for sophisticated equipment/machinery, desire payment through LC, depending on the merits of the case, this may be agreed to. 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.

**c. Documents for Payment:**

- i) Supplier's Invoice indicating, inter alia description and specification of the goods, quantity, unit price, total value;
- ii) Packing list;
- iii) Insurance certificate;
- iv) Railway receipt/consignment note;
- v) Manufacturer's guarantee certificate and in-house inspection certificate;
- vi) Inspection certificate issued by purchaser's inspector; and
- vii) Any other document(s) as and if required in terms of the contract.

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

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 supplier and purchaser are equally compensated for rise or fall in the price of the goods on account of such statutory variations.

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

### **13. Evaluation of Bids and Award of Contract**

- i. The evaluation of tenders is one of the most significant areas of purchase management and the process must be transparent. All tenders are to be evaluated strictly on the basis of the terms and conditions incorporated in the tender document and those stipulated by the tenderers in their tenders. The Contracting Authority may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion etc. No criteria shall be used for evaluation of tenders that cannot be verified. 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.

#### **ii. Preliminary Examination**

##### **a. Unresponsive Tenders**

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

- i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document;
- ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption;
- iii) The bidder is not eligible to participate in the bid as per laid down eligibility criteria (example: the tender enquiry condition says that the bidder has to be a registered MSE unit but the tenderer is a, say, a large scale unit);
- iv) The tenderer has quoted for goods manufactured by a different firm without the required authority letter from the proposed manufacturer;



- v) The bid departs from the essential requirements specified in the bidding document (for example, the tenderer has not agreed to give the required performance security); or
- vi) Against a schedule in the list of requirements in the tender enquiry, the tenderer has not quoted for the entire requirement as specified in that schedule (example: in a schedule, it has been stipulated that the tenderer will supply the equipment, install and commission it and also train the purchaser's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

**b. 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:

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

**c. 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.

**d. Clarification of Bids/Shortfall Documents:**

During evaluation and comparison of bids, the purchaser 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/VAT 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.

**e. 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. In Two Stage Bids, the PQB/EoI stage would have already been evaluated as detailed in Chapter 4 and this second stage is for evaluation of responses to the Second Stage Multiple Envelops from the shortlisted qualified bidders. Evaluation of techno-commercial and financial aspects are, however, discussed separately below. It is of utmost importance that the authenticity, integrity and sanctity of unopened financial bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelop, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

**i. Evaluation of Techno-commercial Bid:**



In evaluation of the techno-commercial bid, conformity of the eligibility/qualification, technical and commercial conditions of the offered goods to those in the bid document is ascertained. 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 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. **Considering Minor Deviations:** Court has consistently taken a view that Procuring Entity is entitled to consider and allow minor deviations, which do not amount to material deviations. A material deviation, reservation, or omission which should not be waived are those that:

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

**f. 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 Technocommercial 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.

**g. 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) Unless announced beforehand explicitly in the tender documents, the quoted price should not be loaded on the basis of deviations in the commercial conditions. If it is decided to incorporate such clauses, these should be unambiguous and clear – and thereafter there should be no relaxation during evaluation. Moreover, sometimes, while purchasing sophisticated and costly equipment, machinery, and so on, the Procuring Entity also gives special importance to factors such as high quality performance, environmental friendly features, low running cost, low maintenance cost, and so on. To take care of this, relevant details are to be incorporated in the bid document and the criteria adopted to assess the benefit of such features while evaluating the offers are also to be clearly stipulated in the tender enquiry document so that the tenderers are aware of it and quote accordingly. While evaluating

such offers, these aspects are also to be taken into account. Such details, whenever considered necessary, should be evolved by the competent technical authority for incorporation in the tender document, so that there is no ambiguity and/or vagueness in them;

- iv) Normally, the comparison of the responsive tenders shall be on total outgo from the Procuring Entity's pocket, for the procurement to be paid to the supplier or any third party, including all elements of costs as per the terms of the proposed contract, including any taxes, duties, levies etc, freight insurance etc. Therefore it should normally be on the basis of CIF/FOR destination basis, duly delivered, commissioned, as the case may be.
- v) In the case of goods manufactured in India or goods of foreign origin already located in India, taxes and duties, which will be contractually payable (to the tenderer) on the goods are to be added;
- vi) In the case of goods of foreign origin offered from abroad, customs duty and other similar import duties/taxes, which will be contractually payable (to the tenderer) on the goods, are to be added;
- vii) As per policies of the Government from time to time, the purchaser reserves his option to give price/purchase preferences as indicated in the tender document;
- viii) In case the list of requirements contains more than one schedule, the responsive, technically suitable tenders will be evaluated and compared separately for each schedule. The tender for a schedule will not be considered if the complete requirements prescribed in that schedule are not included in the tender. However, tenderers have the option to quote for any one or more schedules and offer discounts for combined schedules. Such discounts, wherever applicable, will be taken into account to for deciding the lowest evaluated cost for Procuring Entity in deciding the successful tenderer for each schedule, subject to that tenderer(s) being responsive; and
- ix) If the tenders have been invited on a variable price basis, the tenders will be evaluated, compared and ranked on the basis of the position prevailing on the day of tender (Technical Bid) opening and not on the basis of any future date.

#### **h. Reasonableness of Prices**

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

Where there is no estimated cost, a comparison with Last Purchase Price (LPP - the price paid in the latest successful contract) is the basis for judging reasonableness of rates. The following points may be kept in mind before LPP is relied upon as a basis for justifying rate reasonableness:

- i) The basic price, taxes, duties, transportation charges, Packing and Forwarding charges should be indicated separately;
- ii) Where the firm holding the LPP contract has defaulted, the fact should be highlighted and the price paid against the latest contract placed prior to the defaulting LPP contract, where supplies have been completed, should be used;

- iii) Where the supply against the LPP contract is yet to commence, that is, delivery is not yet due, it should be taken as LPP with caution, especially if the supplier is new, the price paid against the previous contract may also be kept in view;
- iv) Where the price indicated in the LPP is subject to variation or if it is more than a year old, the updated price or as computed in case of the Price Variation Clause (PVC) may also be indicated;
- v) In the case of wholly imported stores, the comparison of the last purchase rate should be made with the net CIF value at the current foreign exchange rate;
- vi) It is natural to have marginal differences in prices obtained at different cities/offices for the same item, due to their different circumstances. The prices obtained are greatly influenced by quantity, delivery period, terms of the contract, these may be kept in view; and
- vii) Prices paid in emergencies or prices offered in a distress sale are not accurate guidelines for future use. Such purchase orders and TC proceedings should indicate that “these prices are not valid LPP for comparison in future procurement”.

**i. 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.

**j. 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 supply of a bulk quantity and on whom the contract would have been placed but for the decision to negotiate. In no case, including where a cartel/pool rates are suspected,

should negotiations be extended to those who had either not tendered originally or whose tender was rejected because of unresponsiveness of bid, unsatisfactory credentials, inadequacy of capacity or unworkable rates. The circumstances where negotiations may be considered could be:

- 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. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.

**k. 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. (Please refer to para above also regarding receipt of a single offer);
- 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.

**l. 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.

**m. Tender Committee Recommendations/Report**

The TC has to make formal recommendations for the award of the contract to the bidder whose bid has been determined to be substantially responsive and the lowest evaluated bid, provided further that the bidder is determined to be qualified to perform the contract satisfactorily and his credentials have

been verified. It is a good practice that TC should spell out salient terms and conditions of the offer(s) recommended for acceptance. It should also be ensured by the TC that any deviation/variation quoted by the supplier in his bid are not left undiscussed and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the supplier. These recommendations are submitted for approval to the tender accepting authority. In any purchase decision, the responsibility of the CA is not discharged merely by selecting the cheapest offer or accepting TC recommendations but ensuring whether:

- i) Offers have been invited in accordance with this manual and after following fair and reasonable procedures in prevailing circumstances;
- ii) He is satisfied that the selected offer will adequately meet the requirement for which it is being procured;
- iii) The price of the offer is reasonable and consistent with the quality required; and
- iv) The accepted offer is the most appropriate taking all relevant factors into account in keeping with the standards of financial propriety.

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

#### **14. 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 of the goods ordered, prices, and so on) in writing by a registered letter or any other acknowledgeable and fool proof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period (generally 14 (Fourteen) days).

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.

#### **15. 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 supplier's bid security shall be adjusted against the SD or returned as per the terms of the tender documents.

**16. Performance Security**

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

**17. 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 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 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 supplier's unconditional acceptance of the contract obtained. If both parties (Procuring Entity and the supplier) simultaneously sign the contract across the table, further acknowledgement from the 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.

**18. Framing of Contract**

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

- a. 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.



- b. All contracts shall contain a provision for
  - i. Recovery of liquidated damages (LD) for delay in performance of the contract on the part of the contractor;
  - ii. A warranty clause/defect liability clause should be incorporated in contracts for plant and machinery, above a threshold value, requiring the contractor to, without charge, replace, repair or rectify defective goods/works/services;
- c. All contracts for supply of goods should reserve the right of the Employer to reject goods which do not conform to the specifications;
- d. Payment of all applicable taxes by the contractor or supplier; and
- e. When a contract is framed, it should, wherever feasible, include a provision for an unconditional power of revocation or cancellation by the Purchaser/HPPCL at any time on the expiry of one months' notice to that effect.
- f. Standard forms of contracts should be invariable adopted, except where authorities competent to make purchases may, at their discretion, make purchases of low value issuing purchase orders containing basic terms and conditions;
- g. The contract shall explicitly state the termination clause and dispute redressal mechanism as mentioned in Section 4 – Contract Management.

#### 19. **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 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.

## **SECTION 4**

# **Contract Management**

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## Contract Management

### 1. Purpose of Contract Management

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

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

### 2. Costs of delay in Contract Management Decisions: Delays

Payments and decisions in contract management requested by the suppliers should be made within a reasonable time. An atmosphere of lackadaisical dilatory functioning in such matters is liable to lead to bidders quoting higher prices in future bids, besides delays in supplies and disputes in the contract.

### 3. Amendment to the Contract

Once a contract has been concluded, the terms and conditions thereof should not be varied. No amendment to the contract should be made that can lead to a vitiation of the original tender decision or bestow an undue advantage on the

contractor. However, due to various reasons, changes and modifications are needed in the contract. Where it becomes necessary/inescapable, any modification will be carried out with the concurrence of Finance and Legal Cells.

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

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

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

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

#### **4. Payments to the Contractor and Handling of Securities**

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

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

#### **5. Monitoring of Supplier Performance**

As soon as the order is issued, entry shall be made in the progress of supply order register recording therein the name of the supplier, items, rate, quantity, amount,

delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner. Without a sound monitoring process, there can be no assurance that the buyer has received what was contracted. A sound system for monitoring the performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. Purchase order-wise data will be maintained in this register regarding execution by and performance of the supplier. The register shall form the basis for the Management Information System report on unexecuted purchase orders beyond scheduled deliveries, reports on performance of suppliers, and so on.

## **6. Delays in Performance in Contract**

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

In case of items such as raw material which is delivered throughout the year, a delivery schedule of the monthly rate of supply should be specified. It is usual in such cases that there is a slight deviation from such monthly rate of supply. It should be clarified in such cases that the variation in the periodic rate of supply beyond +/- 10 (Ten) per cent in any calendar month; or +/- seven per cent cumulative in any calendar quarter; or +/- five per cent cumulative in any calendar year would be considered as delay in delivery attracting imposition of LD.

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

## **7. Terms of Delivery**

Terms of delivery (FOR, FOB, CIF, and CFR, and so on), inter alia, determine the delivery point of the ordered goods from where the purchaser is to receive/collect the goods. It also decides the legally important issue of when the 'titles of the goods' have passed to the purchaser. The delivery period is to be read in conjunction with the terms of delivery, therefore the delivery is taken to have been made at the time when goods reach the delivery point as per the delivery terms.

## **8. Extension of Delivery**

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

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

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

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

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

#### **9. Delay in Supplies for which Supplier is not Responsible**

Normally, in the following circumstances, the contractual delivery period needs to be re-fixed to take care of the lost period, without imposing any penalty to the supplier:

- i) Cases where the manufacture of stores is dependent on the approval of the advance sample and delay occurs in approving the sample though submitted by the supplier in time;
- ii) Where extension in the delivery period is granted on account of some omission on the part of the purchaser which affects the due performance of the contract by the supplier; and
- iii) Cases where the purchaser controls the entire production.

#### **10. Performance Notice**

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

#### **11. Force Majeure Clause**

A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause). An FM clause in the contract frees both



parties from contractual liability or obligation when prevented by such events from fulfilling their obligations under the contract. An FM clause does not excuse a party's non-performance entirely, but only suspends it for the duration of the FM. The firm has to give notice of FM as soon as it occurs and it cannot be claimed ex-post facto. There may be a FM situation affecting the purchase organisation only. In such a situation, the purchase organisation is to communicate with the supplier along similar lines as above for further necessary action. If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (Ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

Notwithstanding the punitive provisions contained in the contract for delay or breach of contract, the supplier would not be liable for imposition of any such sanction so long as the delay and/or failure of the supplier in fulfilling its obligations under the contract is the result of an event covered in the FM clause.

## **12. Denial Clause**

Since delay in delivery is a default by the seller, the buyer should protect himself against extra expenditure during the extended period by stipulating a denial clause (over and above levy of LD) in the letter informing the supplier of extension of the delivery period. In the denial clause, any increase in statutory duties and/or upward rise in prices due to the PVC clause and/or any adverse fluctuation in foreign exchange are to be borne by the seller during the extended delivery period, while the purchaser reserves his right to get any benefit of a downward revisions in statutory duties, PVC and foreign exchange rate. Thus, PVC, other variations and foreign exchange clauses operate only during the original delivery period.

## **13. Liquidated Damages**

Compensation of loss on account of late delivery (actually incurred as well as notional) where loss is pre-estimated and mutually agreed to is termed as LD. Law allows recovery of pre estimated loss provided such a term is included in the contract and there is no need to establish actual loss due to late supply.

## **14. Quantum of LD**

While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the competent authority may recover from the contractor, as agreed, the LD a sum equivalent to 0.5 (Half) per cent of the prices of any portion of stores delivered late, for each week or part thereof of delay. The total damages shall not exceed 10 (Ten) per cent of the value of delayed goods. The LD cannot exceed the amount stipulated in the contract.

In contracts governed by any type of variation (PVC, ERV or statutory variations), LDs (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC. LDs accrue only in case of delayed supplies. Where or in so far as no supplies have been made under a contract, upon cancellation, recovery of only the loss occasioned thereby can be made, notwithstanding the fact that prior to the cancellation one or more extensions of the delivery period with reservation of the right to LD are granted.

In case of entire (non-severable) contracts, even where staggered deliveries have been indicated, it may happen that supplies are not received according to the delivery schedule. In such cases, keeping in mind the fact that the deliveries indicated under the contract are non-severable, no question of LDs or enforcement of risk purchase would arise so long as there has been no delay in the completion of supplies with reference to the total delivery period.

#### **15. Waiver of LD**

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA with consultation of associated Finance & legal cell may be taken and justifications recorded.

#### **16. Handling Deliveries after the Expiry of Delivery Period**

As per law, if stores are accepted after expiry of the delivery date of a particular instalment without extension in delivery period having being given, duly reserving our rights to levy LD, it amounts to voluntary abrogation of our legal rights under the contract to claim LDs or other remedies.

If the contractor makes supplies locally after the expiry of delivery period, the supplies may be provisionally retained under a franking clause reserving rights and the contractor may be asked to obtain an extension of the delivery period from an authorised officer with or without any LD/denial clause.

“Please note that materials have been supplied after the expiry of contracted delivery date and its provisional retention does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. You may apply for an extension of delivery date from the Procuring Entity. The goods are being retained without prejudice to the rights of the Employer of India under the terms and conditions of the contract.”

As regards supplies coming from outside contractors, if the contractor dispatches the stores after expiry of the delivery period, the consignee should, after the receipt of the railway receipt or lorry receipt or goods consignment note or airway bill, send an intimation to the contractor stating that the action taken by him in dispatching the goods after expiry of delivery date is at his own risk and

responsibility, and that the consignee is not liable for any demurrage, wharfage and deterioration of goods at the destination station and, in his own interest, the contractor should get an extension of the delivery period from the purchasers. A copy of the communication sent to the contractor should also be sent to the purchaser.

In case of imports, the contractor must not dispatch the consignment after expiry of the delivery period without taking prior extension of the delivery period. In any case, the terms of LC should be such that if there are dispatches beyond the delivery period, payment should be denied without levy of full LD and without formal extension of the delivery period by the purchaser.

## **17. Breach of Contract, Remedies and Termination**

In case the contractor is unable to honour important stipulations of the contract, or gives notice of his intention of not honouring or his inability to honour such a stipulation, a breach of contract is said to have occurred. Mostly, such breaches occur in relation to the performance of the contract in terms of inability to supply the required quantity or quality. It could also be due to breach of ethical standards or any other stipulation that affects Procuring Entity seriously.

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

### **i. Cancellation of Contract for Default**

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

- i) If the supplier fails to deliver any or all of the stores within the time period(s) specified in the contract, or any extension thereof granted; and

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

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

ii. **Termination of Contract for Insolvency**

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

iii. **Termination of Contract for Convenience**

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

## **18. Dispute Resolution**

Normally, there should not be any scope for dispute between the purchaser and supplier after entering into a mutually agreed valid contract. However, due to various unforeseen reasons, problems may arise during the progress of the contract leading to a disagreement between the purchaser and supplier. Therefore, the conditions governing the contract should contain suitable provisions for settlement of such disputes or differences binding on both parties. The mode of settlement of such disputes/differences should be through arbitration. However,

when a dispute/difference arises, both the purchaser and supplier should first try to resolve it amicably by mutual consultation. If the parties fail to resolve the dispute within 21 (Twenty-One) days, then, depending on the position of the case, either the purchaser or supplier should give notice to the other party of its intention to commence arbitration. When the contract is with a domestic supplier, the applicable arbitration procedure shall be as per the Indian Arbitration and Conciliation Act, 1996. While processing a case for dispute resolution/litigation/arbitration, the Procuring Entity is to take legal advice, at appropriate stages.

## **19. Arbitration in India**

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 and amendments thereof by a sole arbitrator to be appointed by the Purchaser/HPPCL. For this purpose, when the contract is with a domestic supplier, a standard arbitration clause may be included in the bidding documents indicating the arbitration procedure to be followed. The venue of arbitration should be the place from where the contract has been issued.

## **20. Foreign Arbitration**

The Arbitration and Conciliation Act 1996 has provisions for international commercial arbitration, which shall be applicable if one of the parties has its central management and control in any foreign country.

When the contract is with a foreign supplier, the supplier has the option to choose either the Indian Arbitration and Conciliation Act, 1996 or arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules.

The arbitration clause with foreign firms should be in the form of self-contained agreements. This is true especially for large value contracts or those for costly plant and machinery. The venue of arbitration should be in accordance with UNCITRAL or arbitration rules of India, whereby it may be in India or in any neutral country.

## **21. Court Jurisdiction**

The court at Shimla shall have exclusive jurisdiction between the parties pertaining to the respective contract.

## **22. Closure of Contract**

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final

payment. Before the bank guarantee is released a “No Claim Certificate” may be taken from the contractor. At least in large contracts (above Rs. 25 (Rupees Twenty-Five) lakh), it should be ensured that before the release of the bank guarantee (final payment, if there is no bank guarantee), the following reconciliations should be done across Departments involved in the execution of the contract:

**i. Materials Reconciliation**

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

**ii. Reconciliation with the User Department**

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

- a) Achievement of performance standards of material/equipment supplied;
- b) Installation and commissioning;
- c) Support service during the warranty period which has ended on \_\_\_\_\_;
- d) Training of operators/maintenance staff;
- e) Return of all ID cards, gate passes, documents, drawings, protective gear, material, equipment, facilities and assets loaned to contractor; and
- f) Support during annual maintenance contract (if it was part of the contract) which has ended on \_\_\_\_\_.

**iii. Payment Reconciliation**

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

- a) LD;
- b) Price reduction enforced on account of shortfall in performance of material/equipment;
- c) Variations/deviations from the scope of the contract;
- d) Overpayments/duplicate payments, if any;
- e) Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- f) Demurrage, insurance premiums or claims, customs duties, and so on;
- g) Material reconciliation;
- h) Price and exchange rate variations;

- i) Statutory duties paid on behalf of the contractor by Procuring Entity; and
- j) Inspection charges or loss of material in testing.

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.

On completion of all activities against a contract, the purchase file should be preserved for a period of five years in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, Procuring Entity, at its discretion, may retain important records for future reference.

## **SECTION 5**

### **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: \_\_\_\_\_

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda No.: \_\_\_\_\_;
- (b) We offer to supply in conformity with the Bidding Document and in accordance with the delivery schedule specified in the Schedule of Supply, the following Goods and Related Services: \_\_\_\_\_;
- (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 of 10% percent of the total Price of Delivered Goods & related Services at the time of signing of Contract.
- (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) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
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(If none has been paid or is to be paid, indicate “none.”)

- (i) 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.
- (j) 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: \_\_\_\_\_

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 Supplier”), of the other part:

WHEREAS the Purchaser invited bids for certain Goods and Related Services, viz., \_\_\_\_\_ and has accepted a Bid by the Supplier for the supply of those Goods and Related Services 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 Purchaser’s Notification to the Supplier of Award of Contract;
  - (b) the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (c) the Special Conditions of Contract;
  - (d) the General Conditions of Contract;
  - (e) the Schedule of Supply; and
  - (f) \_\_\_\_\_.

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 Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the 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 Purchaser)

Signed by \_\_\_\_\_ (for the 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]*

## **SECTION 6**

### **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;

### 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
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