

File No. RCIL-COOPROJ(PROC)/5/2022-O/o ED/Projects/CO/RCIL (26036)

Date: 29.05.2024

Principal Executive Director
RailTel Corporation of India Ltd.,
Northern Region, Eastern Region,
Southern Region, Western Region

PED/GGM/GM
Corporate Office
RailTel Corporation of India Ltd.

Sub: Amendments in Procurement Manual for Goods Ver 2.0.

Following amendments in Procurement Manual for Goods have been approved and appended.

1. Clause 8.5.9 (I, ii & iii) shall be read as under:

- i. Sometimes, against Open tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid (only one valid bid/qualified bid) a situation referred to as 'Single Offer'. As per Railway Board letter no. 2021/RS(G)/779/8 dated 04.03.2022, the treatment to such tender shall be as under:
- ii. Whenever an Open tender results in only one offer or one effective offer (only one valid bid/qualified bid), powers to deal such cases would be with the Tender Accepting Authority as per delegation of power as issued by RailTel from time to time for direct acceptance of tenders/through constitution/composition of tender committee (as the case may be), provided following conditions are satisfied and recorded by TC/Accepting Authority.
 - a. The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
 - b. The qualification criteria were not unduly restrictive; and
 - c. Prices are reasonable in comparison to market values
- iii. Deleted.

This is issued with Finance Concurrence and approval of the Competent Authority.

Ravi Vishwakarma
29.05.2024
Sr. DGM/Project

Copy to:

1. OSD to CMD for kind information for CMD.
2. DPOM, DNPM and DF for kind information.

File No. RCIL-COOPROJ(PROC)/5/2022-O/o ED/Projects/CO/RCIL (26036)
Date: 15.05.2024



Principal Executive Director
RailTel Corporation of India Ltd.,
Northern Region, Eastern Region,
Southern Region, Western Region

PED/GGM/GM
Corporate Office
RailTel Corporation of India Ltd.

Sub: Amendments in Procurement Manual for Goods Ver 2.0.

Following amendments in Procurement Manual for Goods have been approved and appended.

1. New para (c) in Clause 6.2.2.6 (iv) shall be read as under:

c. Technical Eligibility Criteria For the tenders on GeM:

The Bidder / OEM {themselves or through reseller(s)}, should have executed project for supply and installation / commissioning of same or similar Category Products during preceding 3 financial years (i.e. current year and three previous financial years) as on opening of bid, as per following criteria:

(i) Single order of at least 35% of estimated bid value; or

(ii) Two orders of at least 20% each of estimated bid value; or

(iii) Three orders of at least 15% each of estimated bid value.

Satisfactory Performance certificate issued by respective Buyer Organization for the above Orders should be uploaded with bid. In case of bunch bids, the Category related to primary product having highest bid value should meet this criterion.

2. Clause 6.2.2.6 (vii) (a) shall be read as under:

a. In case a contract is started prior to 07 (seven) years, ending last day of month previous to the one in which tender is invited, but completed in last 07 (seven) years, ending last day of month previous to the one in which tender is invited, the completed work shall be considered for fulfilment of credentials.

For the tenders on GeM: In case a contract is started prior to 03 (three) years, ending on the date of opening of bid, but completed in last 03 (three) years, ending on the date of opening of bid, the completed work shall be considered for fulfilment of credentials.

3. Clause 6.2.3 shall be read as under:

Minimum Time Period for Opening of Advertised Tender

Minimum time limit for tender opening is 21 days from the date of uploading of complete tender document on e-procurement portal for downloading by the firm. The corresponding time limit for

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रेलटेल कॉर्पोरेशन ऑफ इंडिया लिमिटेड (भारत सरकार का उपक्रम)
RailTel Corporation of India Ltd. (A Government of India Undertaking)

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global tender will be 30 days. However, this shall be minimum time limit and wherever administration feels, because of the complexity of the item where longer minimum time may be justified, this minimum limit may be enhanced as deemed fit.

For tenders valued upto and including Rs. 2 Crore, invited through e-tendering, the tender notice period can be reduced up to 14 days with the approval of the CA and with associated finance concurrence.

4. Note under Clause 7.1.1. (i) shall be read as under:

Note: In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details and Bid Security Declaration.

5. Clause 8.5.4 (ii) shall be read as under:

- ii. However, RailTel may decide in advance **and notify in tender document in advance** to have more than one source of supply on account of delivery requirement in tender, quantity under procurement and vital/safety nature of items.

Quantities would be distributed on eligible bidders as per the following formula. Such distribution/splitting of the tendered/procurable quantity and the quantity distributed will depend upon the differential of rates quoted by the tenderer in the manner detailed below:

Price differential between eligible L1 & L2	Quantity distribution ratio between eligible L1 & L2
Up to 3%	60:40
More the 3% and up to 5%	65:35
More than 5%	If the difference between eligible L1 & L2 is more than 5%, splitting of the quantity shall be done among L1, L2 L3 in proportion to 70:20:10.

While distributing as above, the purchaser shall offer the lowest acceptable rate for bulk ordering to the higher tenderer(s). In the event of rejection of such counter offer(s) by L1 or L2 or L3 tenderer, the purchaser shall further decide on the placement of order as detailed below:

- a. If L3 bidder does not accept the counter offer, the quantity allotted to him shall be redistributed additionally between L1 & L2 again as per the formula – Quantity in % of L1 * Quantity in % of L3/ Quantity in % of total of L1+L2.**
- b. If L2 bidder does not accept the counter offer, the quantity allotted to him shall be redistributed additionally between L1 & L3 again as per formula- Quantity in % of L1 * Quantity in % of L2/ Quantity in % of total of L2+L3.**
- c. If L1 does not accept the offer, the tender will be discharged.**

6. Clause 8.6.1 (i) shall be read as under:

- i. Prior to the expiry of the period of bid validity, **PO shall be issued to the successful bidder through Email**. Communication of acceptance of offer is considered complete as soon as it is received **and accepted by the bidder either on email of authorised person of bidder or**

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physical acceptance of PO whichever is earlier. Hard copy is to be sent by courier/ by Registered post/ by hand. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period. **All delivery will be counted from the date of PO.**

7. Clause 8.6.1 (ii) shall be read as under:

ii. **In respect of contract covering more than one region, RailTel will issue the Global Blanket PO to the contractor. In such case region wise POs shall be issued separately. However, all delivery liabilities would be counted from the date of issue of Global Blanket PO.**

In case of RC, Blanket PO/Global Blanket PO will be issued and sub PO(s) will be issued subsequently. In such case, all delivery liabilities would be started from the date of issue of sub PO(s).

Blanket PO/ Global Blanket PO/PO should be issued within the offer period with finance vetting and approval of the CA.

This is issued with Finance Concurrence and approval of Competent Authority.

Ravi Vishwakarma
15.05.2024
Sr. DGM/Project

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2. DPOM, DNPM and DF for kind information.



रेलटेल
RAILTEL

Manual
for
Procurement of Goods
Version 2.0

RailTel Corporation of India Limited

(A Government of India Undertaking)

Plate-A, 6th Floor, Office Block Tower-2,

East Kidwai Nagar, New Delhi-110023

<https://www.railtelindia.com/>

Amendment History

S. No.	Date of Amendment	Version	Amendments
1	02.11.2020	1.0	
2	14.11.2023	2.0	The Goods Procurement Manual has been modified till October 2023, based on the updated Manual for Procurement of Goods issued by Department of Expenditure, Ministry of Finance in June 2022 and encompassing the guidelines issued by the Railway Board & RailTel, as applicable

**SANJAI KUMAR
CHAIRMAN AND
MANAGING DIRECTOR**



**RailTel Corporation of India Limited,
Government of India
Ministry of Railways
New Delhi**



FOREWORD

RailTel Corporation is one of the largest neutral telecom infrastructure providers in the country owing a Pan-India optic fiber network on exclusive Right of Way (ROW) along Railway track. The OFC network covers all important towns & cities of the country and several rural areas covering 70% of India's population.

RailTel has been procuring the material for network creation, execution of new projects, spares for operations and maintenance of existing network. In 2020, RailTel developed a procurement manual to equip procurers within the corporate and regional offices with the guidelines pertaining to public procurement and RailTel's area of expertise.

New guidelines, amendments have been issued from time to time, since issuance of the last manual. All the procurement related directives as per revised manual of Department of Expenditure, MoF and new guidelines issued by RailTel & Railway, applicable to RailTel have been incorporated in this updated manual.

While every care has been taken to ensure that the contents of this manual are accurate, if any discrepancy/ deficiency is found in the Manual, the same must be brought to the notice of CO.

Sincere compliments to all officers who have contributed in preparation of this manual.

**(Sanjai Kumar)
CMD/RailTel**

Date: 14/11/2023

Manoj Tandon
**Director Project, Operation
& Maintenance**



RailTel Corporation of India Limited,
Government of India
Ministry of Railways
New Delhi



FOREWORD

RailTel Corporation of India Ltd. a "Mini Ratna (Category-I)" PSU is one of the largest neutral telecom infrastructure providers in the country with more than 61,000 RKM OFC and connects more than 6,000 Railway Stations across India. Various Spares, Material in bulk are required to maintain such large network and in execution of the Projects.

This manual has been updated incorporating latest guidelines and policies pertaining to public procurement. This will serve as a general guide for executives involved in procurement, allowing them to navigate the complex terrain of public procurement.

I would like to acknowledge the dedicated efforts of the nominated Committee Members. I look forward to suggestions for amendments or improvements in the Manual.

(Manoj Tandon)

Director Project, Operation & Maintenance

Date: 14/11/2023

Suresh Kumar
**Principal Executive Director/
Infrastructure**



RailTel Corporation of India Limited,
Government of India
Ministry of Railways
New Delhi

FOREWORD



RailTel Corporation of India Ltd. is a leading company in new technology and is procuring new technology products. Procurement of such equipment and services is always a challenge. To overcome these challenges, systematic improvements are required to be done in organization. As on efforts in this direction, procurement manual is being updated within a period of 3 years.

This updated manual incorporates all the procurement related directives as per revised manual of Department of Expenditure, MoF and new guidelines issued by RailTel & Railways, applicable to RailTel. This updated manual serves as a general guide for executives involved in procurement and a training document for new recruits in organisation.

I would like to acknowledge the dedicated efforts of the nominated Committee Members Shri Ravi Vishvakarma (Sr. DGM/Project), Shri Rajeev Kumar (Sr. DGM/ITP), Shri Rahul Agarwal (JGM/Finance) and Shri Aryavrat Sharma (Sr. DGM/Marketing) in the preparation of this Manual. The contribution of Shri Vikram Rajvanshi, Consultant (Public Procurement) is also acknowledged.

(Suresh Kumar)

Principal Executive Director/ Infrastructure

ABBREVIATIONS

AAEC	Appreciable Adverse Effect on Competition
AMC	Annual Maintenance Contract
AoA	Article of Association
APO	Advance Purchase Order
BA	Business Analytics
BDS	Bid Data Sheet
BE	Budget Estimates
BOC	Bid Opening Committee
BOQ	Bill of Quantities
CAG	The Comptroller and Auditor General of India
CBI	Central Bureau of Investigation
CC	Corporate Communication
CCB	Committee of Central Board
CFR	Cost & Freight
CGM	Chief General Manager
CIF	Cost Insurance and Freight
CIP	Carriage and Insurance Paid
CIPP	Code of Integrity in Public Procurement
CISO	Chief Information Security Officer
CMC	Contract Monitoring Committee
CMD	Chairman & Managing Director
CO	Corporate Office
COC	Conditions of Contract
CODs	Central Office Departments
CP	Contract Period
CPO	Chief Procurement Officer
CPPP	Central Public Procurement Portal
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DD	Demand Draft
DEA	Department of Economic Affairs
DFPR	Delegation of Financial Power
DIT	Department of Information Technology
DoE	Department of Expenditure, Ministry of Finance
DPIIT	Department for Promotion of Industry and Internal Trade
DSC	Digital Signature Certificate
EAC	Estimated Annual Consumption
ED	Executive Director
EMD	Earnest Money Deposit
EoI	Expression of Interest
EOQ	Economic Order Quantity
ERP	Enterprise Resource Planning
FAQ	Frequently Asked Questions
FAS	Free Alongside Ship
FCA	Free Carrier
FDR	Fixed Deposit Receipt

FOB	Free On Board
FOT	Form of Tender
FTP	Full Technical Proposal
GCC	General Conditions of Contract
GeM	Government e-Market Place
GeMAR&PTS	GeM Availability Report and Past Transaction Summary
GFR	General Financial Rules
GOI	Government of India
GST	Goods and Service Tax
GTE	Global Tender Enquiry
HOD	Head of Department
ICB	International Competitive Bidding
IEEMA	Indian Electrical and Electronics manufacturers Association
IEM	Independent External Monitors
IP	Integrity Pact
IREPS	Indian Railways e-Procurement Site
IT	Information Technology
ITB	Instruction to Bidders
JV	Joint Venture
LC	Letter of Credit
LCC	Life Cycle Cost
LLP	Limited Liability Partnership
LoA	Letter of Acceptance
LoI	Letter of Invitation
LPP	Last Purchase Price
LTE	Limited Tender Enquiry
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MoA	Memorandum of Association
MoC	Ministry of Commerce
MoF	Ministry of Finance
MoMSME	Ministry of Micro, Small and Medium Enterprises
MSE	Micro and Small Enterprises
NCB	National Competitive Bidding (Open Tender domestic)
NCS	Non-Consultancy Services
NIC	National Informatics Centre (NIC)
NIT	Notice for Invitation of Tender
NSCS	National Security Council Secretariat
NSIC	National Small Scale Industries Corporation
O&M	Operation & Maintenance
OEMs	Original Equipment Manufacturers
OES	Original Equipment Suppliers
OPM	Original Parts Manufacturers
PAC	Proprietary Article Certificate
PBG	Performance Bank Guarantee
PO	Purchase Order

PPP-MII	Public Procurement (Preference to Make in India), Order
PQ	Post-Qualification
PQB	Pre-Qualification Bidding
PQC	Pre-Qualification Criteria
PR	Purchase Requisition
PVC	Price Variation Clause
RBI	Reserve Bank of India
RCIL	RailTel Corporation of India Ltd.
RFP	Request for Proposal
RFQ	Request for Quotation
ROs	Regional Offices
SAP	System, Applications and Products in Data Processing
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SD	Security Deposit
SLA	Service Level Agreement
SOP	Schedule of Powers
SPO	Sub Purchase Order
SPP	Sustainable Public Procurement
STE	Single Tender Enquiry
TAA	Tender Accepting Authority
TAG	Technical Advisory Group
TC	Tender Committee
TCO	Total Cost of Ownership
TEC	Tender Evaluation Committee
ToR	Terms of Reference
ToT	Transfer of Technology
TS	Technical Specifications
VfM	Value for Money
WOL	Whole of Life

Table of Contents

AMENDMENT HISTORY	3
FOREWORD	5
FOREWORD	7
FOREWORD	9
ABBREVIATIONS	11
DISCLAIMER	23
CHAPTER 1: DEFINITIONS	25
1.1 Supply Contract.....	25
1.2 Other Definitions.....	25
CHAPTER 2: MATERIALS MANAGEMENT- AN INTRODUCTION	31
2.1 Introduction	31
2.2 About the Manual for Procurement of Goods.....	31
2.2.1 Modifications/Amendments in the Manual	31
2.2.2 Applicability of the Manual.....	32
2.3 Authorities competent to purchase goods and their Purchase Powers.....	33
2.4 Basic Aims of Procurement – the Five R’s of Procurement	33
2.5 Refined Concepts of Cost and Value – Value for Money	34
2.6 Fundamental Principles of Public Procurement	34
2.7 Standards (Canons) of Financial Propriety.....	38
2.8 Central Public Procurement Portal	38
2.9 Product Reservation and Preferential/Mandatory Purchase from certain sources.....	39
2.9.1 RESERVATION OF SPECIFIC ITEMS FOR PROCUREMENT FROM MICRO AND SMALL ENTERPRISES (MSE).....	39
2.9.2 PUBLIC PROCUREMENT POLICY FOR MICRO AND SMALL ENTERPRISES (MSEs)	39
2.9.3 KEY POINTS TO BE CONSIDERED W.R.T MSE ORDER UNDER RAILTEL PROCUREMENTS	42
2.9.4 PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA) ORDER, 2017	43
2.9.4.1 KEY CONSIDERATIONS W.R.T MAKE IN INDIA ORDER (PMI POLICY) FOR RAILTEL PROCUREMENTS.....	50
2.9.5 REGISTRATION OF BIDDERS BELONGING TO COUNTRIES SHARING LAND BORDER WITH INDIA ³	51
2.10 Proactive Information Disclosures.....	57
2.11 Materials Management	57
CHAPTER 3: ETHICS ON PURCHASES	59
3.1 Code of Integrity for Public Procurement (CIPP)	59
3.1.1 CODE OF INTEGRITY FOR PUBLIC PROCUREMENT	59
3.1.2 OBLIGATIONS FOR PROACTIVE DISCLOSURES	60
3.1.3 PUNITIVE PROVISIONS.....	60
3.1.4 CONDUCT OF PROCURING ENTITY’S OFFICIALS IN PUBLIC PROCUREMENT	61
3.2 Integrity Pact (IP)	61
3.2.1 ROLE OF IEMs IN INTEGRITY PACT.....	62
3.2.2 SYSTEMIC IMPROVEMENTS.....	63
3.2.3 DISPUTE MEDIATION	63
3.2.4 COVERAGE	63
3.2.5 IMPLEMENTATION	63
3.3 Procurement from Trusted Sources	65

3.4	Debarment of Suppliers	66
3.4.1	GUIDELINES ON DEBARMENT OF FIRMS FROM BIDDING	67
3.4.2	SAFEGUARDING PROCURING ENTITY’S INTERESTS DURING DEBARMENT OF SUPPLIERS:	70
CHAPTER 4: NEED ASSESSMENT AND FORMULATION OF SPECIFICATION		73
4.1	General Steps for Indenting Department	73
4.2	General Steps for Procurement Department	73
4.3	Indents are required to be generated for following requirements	74
4.3.1	CAPITAL ASSETS.....	74
4.3.2	OPERATION AND MAINTENANCE.....	74
4.3.3	LAST MILE CONNECTIVITY (LMC)/BUSINESS DELIVERY	74
4.3.4	CUSTOMER PROJECT AND DEPOSIT WORKS	74
4.3.5	ASSETS REPLACEMENT.....	74
4.3.6	IMPREST INDENT	75
4.3.7	MISCELLANEOUS DEMAND.....	75
4.4	Quantity Forecast.....	75
4.5	Forecasting Methods	75
4.6	Estimation of Cost.....	77
4.7	Formulation of Technical specifications	77
4.8	Discourage procurement involving evaluation of samples	79
4.9	Procurement Planning	79
4.10	Indenting Procedures.....	80
CHAPTER 5: MODES OF PROCUREMENT AND BIDDING SYSTEMS		83
5.1	Modes of Procurement.....	83
5.2	Open Tender Enquiry (OTE)	83
5.4	Limited Tender Enquiry (LTE).....	87
5.5	Special Limited Tender Enquiry (SLTE).....	88
5.6	Single Tender	88
5.6.1	SINGLE TENDER THROUGH PROPRIETARY ARTICLE CERTIFICATE (PAC).....	88
5.6.2	SINGLE TENDER ENQUIRY (STE) WITHOUT A PAC.....	89
5.7	Direct Procurement by Purchase Committee	90
5.8	Direct Procurement without Quotation	90
5.9	Procurement through Government e-Marketplace (GeM)	91
5.10	ELECTRONIC REVERSE AUCTION (RA).....	92
5.11	Bidding Systems	94
5.11.1.	SINGLE STAGE BIDDING SYSTEM.....	94
5.11.1.1	SINGLE STAGE SINGLE ENVELOPE SYSTEM.....	94
5.11.1.2	SINGLE STAGE TWO ENVELOPES SYSTEM	94
5.11.1.3	SINGLE STAGE MULTI ENVELOPS SYSTEM WITH PRE-QUALIFICATION	95
5.12	Two Stage Bidding - Expression of Interest Tenders – Market Exploration	97
5.12.1	INVITATION OF EOI TENDERS FOR PROCUREMENT OF GOODS & SERVICES	98
5.12.2	EVALUATION OF EOI	99
CHAPTER 6: PROCESS OF TENDERING		101
6.1	Preparation of Tender Documents	101
6.2	Contents of a Standard Bidding Document (SBD).....	101

6.2.1	NOTICE INVITING TENDER	102
6.2.2	INFORMATION TO BIDDERS (ITB) AND AITB/BID DATA SHEET (BDS)	103
6.2.2.1	PURCHASE PREFERENCE POLICIES	103
6.2.2.2	CLARIFICATION OF TENDER DOCUMENTS	103
6.2.2.3	AMENDMENT OF TENDER DOCUMENTS.....	103
6.2.2.4	BID VALIDITY	103
6.2.2.5	WITHDRAWAL, SUBSTITUTION AND MODIFICATION OF TENDERS.....	104
6.2.2.6	ELIGIBILITY/EVALUATION/QUALIFICATION CRITERIA	104
6.2.3	MINIMUM TIME PERIOD FOR OPENING OF ADVERTISED TENDER	107
6.3	Joint Venture (JV) in Composite Tenders.....	107
6.3.1	CREDENTIALS & QUALIFYING CRITERIA FOR JV	110
6.3.2	PARTICIPATION OF PARTNERSHIP FIRMS IN CONTRACTS.....	111
6.3.3	EVALUATION OF ELIGIBILITY OF A PARTNERSHIP FIRM	114
6.3.4	CONSORTIUM BIDS	114
6.4	Evaluation Criteria.....	115
6.5	OEM/Authorized Dealer/Agents of Supplier	115
6.6	Schedule of Requirements	116
6.7	General and Special Conditions of the Contract.....	116
6.8	Submission Formats.....	116
6.9	Mandatory e-Publishing of Tenders	116
6.10	Receipt and Custody of Tenders	117
6.10.1	COST AND AVAILABILITY OF TENDER DOCUMENTS.....	117
6.10.2	PRE-BID CONFERENCE	117
6.10.3	EXTENSION OF TENDER OPENING DATE.....	118
6.11	Invitation of Tenders.....	118
6.12	Publication of Addendum/ Corrigendum to Tender.....	118
6.13	Reverse Auction	118
CHAPTER 7: BID/ PERFORMANCE SECURITY, PAYMENT TERMS AND PRICE VARIATIONS.....		121
7.1	Forms of Security	121
7.1.1	BID SECURITY/ EMD.....	121
7.1.2	PERFORMANCE SECURITY.....	122
7.1.3	WARRANTY BANK GUARANTEE.....	124
7.1.4	VERIFICATION OF BANK GUARANTEES.....	125
7.1.5	SAFE CUSTODY AND MONITORING OF EMDs, PERFORMANCE SECURITIES AND OTHER INSTRUMENTS.....	125
7.2	Payment Clause.....	125
7.3	Terms of Payment for Domestic Goods.....	127
7.3.1	MODES OF PAYMENT FOR DOMESTIC GOODS	127
7.3.2	DOCUMENTS FOR PAYMENT FOR DOMESTIC GOODS	128
7.3.3	MODES OF PAYMENT FOR IMPORTED GOODS	128
7.3.4	DOCUMENTS FOR PAYMENT FOR IMPORTED GOODS	128
7.3.5	LETTER OF CREDIT.....	129
7.4	Advance Payment	129
7.4.1	DOCUMENTS FOR ADVANCE PAYMENTS	130
7.4.2	INSURANCE.....	130

7.5	Firm Price vis-à-vis Variable Price	130
7.5.1	RAW MATERIAL PRICE ESCALATION CLAUSE.....	132
7.6	Exchange Rate Variation	133
7.6.1	DOCUMENTS FOR CLAIMING ERV	133
7.7	Taxes, Duties and Levies	133
7.7.1	STATUTORY DUTIES AND TAXES ON DOMESTIC GOODS.....	133
7.8	Key Conditions Applicable only for Items Which are Covered by GST	134
7.8.1	TAXES AND DUTIES	134
7.8.2	DENIAL CLAUSE	134
7.8.3	GOODS AND SERVICES TAX.....	134
7.8.4	PAYMENT OF GST	135
7.9	Incoterms Terms of Delivery.....	135
7.10	Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers	137
	CHAPTER 8: EVALUATION OF BIDS AND AWARD OF CONTRACT.....	139
8.1	Tender Evaluation	139
8.2	Preparation and Vetting of Comparative Statement.....	139
8.3	Preliminary Examination.....	140
8.3.1	UNRESPONSIVE TENDERS	140
8.3.2	NON-CONFORMITIES BETWEEN FIGURES AND WORDS	140
8.3.3	MINOR INFIRMITY/IRREGULARITY/NON-CONFORMITY.....	141
8.3.4	CLARIFICATION OF BIDS/SHORTFALL DOCUMENTS	141
8.4	Evaluation of Responsive Bids and Decision on Award of Contract	141
8.4.1	EVALUATION OF TECHNO-COMMERCIAL BID	142
8.4.2	RIGHT OF BIDDER TO QUESTION REJECTION AT TECHNO-COMMERCIAL STAGE.....	143
8.4.3	EVALUATION OF FINANCIAL BIDS AND RANKING OF TENDERS IN GENERAL.....	143
8.4.4	EVALUATION OF CONCURRENT APPLICATION: MSE AND MAKE IN INDIA PROCUREMENT ORDERS	144
8.4.5	GTE TENDERS.....	147
8.5	Deliberations by the Tender Committee for Award of Contract	148
8.5.1	TIMELY PROCESSING OF TENDERS.....	148
8.5.2	EXTENSION OF TENDER VALIDITY PERIOD.....	148
8.5.3	VARIATION OF QUANTITIES AT THE TIME OF AWARD/OPTION CLAUSE	149
8.5.4	SPLITTING OF TENDERED QUANTITY	150
8.5.5	REASONABLENESS OF PRICES	151
8.5.6	CONSIDERATION OF ABNORMALLY LOW BIDS.....	151
8.5.7	CARTEL FORMATION/POOL RATES	152
8.5.8	NEGOTIATIONS	152
8.5.9	CONSIDERATION OF LACK OF COMPETITION IN OTE/ GTE AND LTE	154
8.5.10	CANCELLATION OF PROCUREMENT PROCESS/ REJECTION OF ALL BIDS/RE-TENDER.....	154
8.5.11	HANDLING DISSENT AMONG TC MEMBERS.....	155
8.5.12	INDEPENDENCE, IMPARTIALITY, CONFIDENTIALITY AND 'NO CONFLICT OF INTEREST' AT ALL STAGES OF EVALUATION OF BIDS	156
8.5.13	TENDER COMMITTEE RECOMMENDATIONS/REPORT	156
8.6	Award of Contract.....	157
8.6.1	LOA TO SUCCESSFUL BIDDER.....	157

8.6.2	BIDDER’S RIGHT TO QUESTION REJECTION AFTER AWARD OF THE CONTRACT	157
8.6.3	PERFORMANCE SECURITY.....	158
8.6.4	ACKNOWLEDGEMENT OF CONTRACT BY SUCCESSFUL BIDDER AND EXECUTION.....	158
8.7	Issue of Purchase Orders	158
8.8	Procurement Records	158
CHAPTER 9: CONTRACT MANAGEMENT		161
9.1	Contract Management.....	161
9.2	Amendment to the Contract.....	161
9.3	Option Clause.....	162
9.3.1	OPTION CLAUSE	162
9.4	Safeguards for Handing over Materials/Equipment to Contractors in Project Execution.....	162
9.5	Payments to the Contractor and Handling of Securities	163
9.6	Monitoring of Supplier Performance.....	163
9.7	Delays in Performance of Contract.....	164
9.7.1	DELIVERY PERIOD	164
9.7.2	TERMS OF DELIVERY.....	164
9.7.3	EXTENSION OF DELIVERY.....	164
9.7.4	DELAY IN SUPPLIES FOR WHICH SUPPLIER IS NOT RESPONSIBLE	165
9.7.5	PERFORMANCE NOTICE.....	165
9.7.6	FORCE MAJEURE CLAUSE	166
9.7.7	DENIAL CLAUSE	166
9.7.8	LIQUIDATED DAMAGES	166
9.7.8.1	QUANTUM OF LD.....	167
9.7.8.2	WAIVER OF LD.....	167
9.7.9	HANDLING DELIVERIES AFTER THE EXPIRY OF DELIVERY PERIOD	167
9.8	Breach of Contract, Remedies and Termination.....	168
9.8.1	CANCELLATION OF CONTRACT FOR DEFAULT	168
9.8.2	TERMINATION OF CONTRACT FOR INSOLVENCY	169
9.8.3	TERMINATION OF CONTRACT FOR CONVENIENCE	169
9.9	Dispute Resolution.....	169
9.9.1	ARBITRATION CLAUSE.....	169
9.9.1.1	ARBITRATION AND DISPUTE RESOLUTION	170
9.9.1.2	FOREIGN ARBITRATION.....	171
9.9.1.3	ARBITRATION AWARDS.....	171
9.10	Closure of Contract	171
9.10.1	MATERIALS RECONCILIATION.....	171
9.10.2	RECONCILIATION WITH THE USER DEPARTMENT	172
9.10.3	PAYMENT RECONCILIATION	172
9.11	Goods Receiving.....	172
9.11.1	TRANSPORTATION OF GOODS.....	172
9.12	Quality Assurance and Inspection	173
9.12.1	INSPECTIONS – MEASURING QUALITY STANDARDS.....	173
9.12.2	TYPES OF INSPECTION AGENCIES	176
9.12.3	ISSUE OF INSPECTION REPORT.....	176

9.12.4	MATERIAL PUT UP FOR INSPECTION TOWARDS THE END OF DELIVERY.....	178
9.12.5	ACCEPTANCE OF EXCESS / SHORT SUPPLY BY THE CONSIGNEE WITHOUT FORMAL AMENDMENT TO THE CONTRACT.....	180
	CHAPTER 10: TYPES OF CONTRACTS	181
10.1	Rate Contracts.....	181
10.2	Annual Maintenance Contract (AMC).....	182
10.3	Long term Contracts.....	184
	CHAPTER 11: RAILTEL'S SCRAP DISPOSAL POLICY	185
11.1	Scrap for Disposal	185
11.2	Reasons for Scrap Arising.....	185
11.3	Declaration of Unserviceable/Scrap	185
11.4	Survey committees	185
11.4.1	FOR OFC	186
11.4.2	FOR EQUIPMENT	186
11.4.3	RECOMMENDATION ON ANTICIPATED SALE PRICE.....	187
11.4.4	OBSOLETE/ UNSERVICEABLE STORES.....	187
11.5	Procedure for Disposal of Scrap.....	187
11.5.1	SALE OF SCRAP.....	187
11.5.2	GENERAL CONDITION FOR SALE OF SCRAP	188
11.6	SOP for Disposal of Scrap.....	190
	CHAPTER 12: LEGAL ASPECTS OF PUBLIC PROCUREMENT	191
12.1	Relevant Provisions of the Constitution of India	191
12.1.1	EQUALITY FOR BIDDERS	191
12.1.2	PERSONS AUTHORIZED TO MAKE AND EXECUTE CONTRACTS ON BEHALF OF GOVERNMENTS	191
12.2	Other Mercantile Laws.....	191
12.2.1	LEGAL ASPECTS GOVERNING PUBLIC PROCUREMENT OF GOODS - INTRODUCTION.....	191
12.3	Updation of Labour data on Railway's Shramikkalyan Portal.....	192
	<u>ANNEXURES.....</u>	195
	Annexure-1: Common examples of "Restrictive and discriminatory conditions against the local suppliers" and "Other conditions which make the bid non-compliant to PPP-MII Order"	197
	Annexure-2: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4).....	199
	Annexure-3: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores.....	202
	Annexure-4: Purchase without Quotation Format	204
	Annexure-5: Sample Prequalification Criteria	205
	Annexure-6: AFFIDAVIT.....	208
	Annexure-7: CONSORTIUM AGREEMENT /MEMORANDUM OF AGREEMENT.....	209
	Annexure-8: Manufacturer Authorisation Form (MAF).....	212
	Annexure-9: Example for Concurrent Application of PPP-MSE and PPP-MII Order during Evaluation	213
	Annexure-10: Invitation and Declaration for Negotiations	214
	Annexure-11: Format of Revised Offer in Negotiations	215
	Annexure-12: Format for Extension of Delivery Period/Performance Notice.....	216

Annexure-13: Proprietary Article Certificate	218
Annexure-14: Model Format for Correspondence with Supplier after Expiry of Delivery Date	219
Annexure-15: No Claim Certificate	220
Annexure-16: Long Terms Maintenance Form/Annual Maintenance Contract (AMC) by OEM	221
Annexure-17: Proforma for Recommendation of Survey Committee for Scrapping of Asset.....	222
Annexure-18: Format for Bid Security Declaration.....	223
Annexure-19: Example of Formula for Price Variation Clause	224

DISCLAIMER

While every care has been taken to ensure that the contents of this manual are accurate and up to October 2023, the Purchase Officials are advised to check the precise current provisions of law and the applicable instructions from the original sources. In case of any conflict between the provisions stipulated in this manual and in the original source such as GFR or the prevailing laws, the provisions contained in the extant law, relevant Railway Board Circulars and the original instructions shall prevail. Only online document is valid and the amendment has to incorporate in the main body and not as addenda.

Chapter 1: Definitions

1.1 Supply Contract

Railway Board Letter No. 2010/RS (G)/363/1 dated 27.04.2017, advises that relevant rules of General Financial Rules, 2017 may be referred to, for the purpose of categorizing various modes of tenders such as Works, Goods, Consultancy, Services etc. and its definition.

RailTel has full powers to make their own arrangements for procurement of goods and services, that are not available on Government e-Marketplace (GeM) (Rule 147 of GFR, 2017 amended on 02.04.2019). Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017.

Rule 143 of GFR 2017 states that “The term ‘goods’ includes all articles, material, commodity, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant, vehicles, aircraft, ships, medicines, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machineries comprising of an integrated production process or such other category of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library. The term ‘goods’ also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance”.

1.2 Other Definitions

- (i) **Store Contracts:** Store Contracts can be classified in the following categories.
 - a. **Supply of Goods:** This type of contracts is related to purely supply of the material like supply of OFC, Duct, assemblies, sub-assemblies, accessories, a group of machineries comprising of an integrated production process or such other category of goods or intangible products like software, technology transfer, licenses, patents or other intellectual properties purchased. The term ‘goods’ also includes works and services which are incidental or consequential to the supply of such goods, such as, transportation, insurance, installation, commissioning, training and maintenance.
 - b. **Supply of Goods & Services:** These types of contracts are generally composite type of contracts. It includes the supply, installation, Commissioning, Testing, Training and its maintenance. In these types of contracts, the supply of the material constitutes the major portion of the contract value and the proportionate value for other parts is very small. In General, the supply portion should be more than 80% of the contract value and remaining portion is for other services. In these types of contracts the responsibility of the contractor is not only to supply the material but also its installation, commissioning, testing etc. For example, in a contract wherein the LCD screens have to be supplied and installed. In this case the supply portion constitutes major portion of the contract value and the contractors after installation and commissioning, will attend warranty issues but not for day to day operation of the equipment’s installed.
- (ii) “Acceptance of Tender” means the letter of memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance of his tender;

- (iii) "Consignee" means where the stores are required by the acceptance of tender to be dispatched by rail, road, air or steamer, the person specified in the Acceptance of Tender to whom they are to be delivered at the destination; Where the Stores are required by the acceptance of tender to be delivered to a person as an interim consignee for the purpose of dispatch to another person, such other persons; and in any other case the person to whom the stores are required by the acceptance of tender to be delivered in the manner therein specified.
- (iv) "Contract" means and includes the invitation to tender, instruction to bidders (ITB), acceptance of tender, General Conditions of Contract (GCC), Special Conditions of Contract (SCC), particulars and the other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the contractor and a formal agreement if executed;
- (v) The "Contractor" means the person, firm or company with whom the order for the supply is placed and shall be deemed to include the contractor's successors (approved by the Purchaser), representatives, heirs, executors and administrators as the case may be, unless excluded by the terms of the contract
- (vi) "The Sub-contractor" means the person, firm or company from whom the Contractor may obtain any material or fittings to be used in the supply or manufacture of the stores.
- (vii) "Drawing" means the drawing or drawings specified in or annexed to the Schedule or Specifications
- (viii) "Government" means the Central Government or a State Government, as the case may be;
- (ix) "The Inspecting Officer" means the person specified in the contract for the purpose of Inspection of stores or work under the contract and includes his authorized representative;
- (x) "Material" means anything used in the manufacture or fabrication of the stores
- (xi) "Particulars" include-
 - a. "Specifications" shall mean all directions, various technical specifications, provisions and requirements attached to the contract, as originally agreed and as modified from time to time by RailTel subject to price adjustments mutatis mutandis which pertain to the method and manner of performing the work or works to the quantities and qualities of the work or works and the materials to be furnished under the contract for the work or works as may be amplified or modified by RailTel-in charge during the performance of the contract in order to provide for unforeseen conditions or in the best interest of the work or works. It shall also include the latest edition including all addenda / corrigenda of relevant Bureau of Indian standard specifications and other relevant codes governing a particular activity or facility. The term shall include the specifications specified in the contract in respect of each type of material/goods to be used in the execution of contract.
 - b. Drawings
 - c. Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall include also a certified copy thereof sealed by the

- Purchaser for the guidance of the Inspecting Officer;
- d. Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample) which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
 - e. Trade pattern, that is to say, a pattern, stores conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardizing authority or a general standard of the industry:
 - f. "Proprietary mark "or "brand" means the mark or brand of a product which is owned by an industrial firm;
 - g. Any other details governing the construction, manufacture or supply of stores as may be prescribed by the contract;
- (xii) "Purchase Officer" means the officer signing the acceptance of tender and includes any officer who has authority to execute the relevant contract on behalf of the Purchaser.
 - (xiii) "Signed" includes stamped, except in the case of an acceptance of tender or any amendment thereof.
 - (xiv) "Site" means the place specified in the contract at which any work is required to be executed by the contractor under the contract or any other place approved by the Purchaser for the purpose;
 - (xv) "Stores" means the goods specified in the contract which the contractor has agreed to supply under the contract;
 - (xvi) "Supply Order" means an order for supply of stores and includes an order for performance of service;
 - (xvii) "Test" means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting officer;
 - (xviii) "Unit" and "Quantity" means the unit and quantity specified in the contract; "Writing" or "Written" includes matter either in whole or in part, in manuscript, type written, lithographed, cyclostyled, photographed or printed under or over Signature or seal, as the case may be;
 - (xix) "Engineer / Engineer-in-Charge" Shall mean an executive of RailTel in charge of works and shall include the superior executives of RailTel. He is responsible for ensuring that all fieldworks covered by the contract are carried out in accordance with approved designs, drawings & specifications and conditions of contract as agreed to. "Engineer's Representative" Shall mean the supervisor of RailTel in direct charge of the works.
 - (xx) The delivery of the stores shall be deemed to take place on delivery of the stores in accordance with the terms of the contract, after approval by the Inspecting Officer if so provided in the contract to
 - a. The consignee at his premises; or
 - b. Where so provided the interim consignee at his premises, or
 - c. A carrier or other person named in the contract for the purpose of transmission

to the consignee, or

- d. The consignee at the destination station in case of contract stipulating for delivery of stores at destination station.
- (xxi) "RailTel" Means M/s. RailTel Corporation of India Limited (also referred as Procuring Entity for the purposes of this Manual), which includes all the subordinate offices in regions and territories.
- (xxii) "Tenderer" or "Bidder" Means and includes any firm of engineers or Contractors or any company or body, corporate or otherwise, who submit the Tender which has been invited.
- (xxiii) "Bid" or "Tender" shall mean the proposal/document that the BIDDER submits as his offer with price and conditions in the requested and specified format as detailed in 'Specifications' / 'Tender documents
- (xxiv) "Purchaser's Engineer" Means the Chairman & Managing Director of RailTel or successor who will decide all matters relating to design, manufacture, installation and commissioning of the plant and equipment at site.
- (xxv) "CIP (Carriage & Insurance Paid) Destination" means the date of delivery would be the date on which the delivery is affected at the consignee's end within any of the RailTel's Region.
- (xxvi) **Time for and Date of Delivery; the Essence of the Contract**-The time for and the date specified in the contract or as extended for the delivery of the stores shall be deemed to be of the essence of the contract and delivery must be completed not later than the date(s) so specified or extended.
- (xxvii) **Progressing of Deliveries**- The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer, Progress Officer or such other Officer as may be nominated by the Purchaser for the purpose of ascertaining the progress of the deliveries under the contract.
- (xxviii) **Samples.**
- a. **Advance Sample**- Where an advance sample is required to be approved under the terms of the contract, the Contractor shall submit the sample free of cost to the Inspecting Officer within the time specified in the acceptance of tender.
- b. Unless otherwise provided in the contract, all samples required for test shall be supplied by the Contractor free of cost. Where sample, which is supplied free, is rejected after examination and test, the same or whatever remains of the sample, after examination and test will be returned to the Contractor at his request and cost within three months of the date of such rejection at public tariff rate at Owner's risk.
- c. **Marking**- Samples submitted shall be clearly labeled with the Contractor's name and address and the acceptance of tender number.
- (xxix) **Loan of Sample**- If a certified sample is lent to the Contractor, it will bear a label containing inter alia variations known to the Inspecting Officer between the said sample and the stores desired. If the Contractor finds any further variation between the certified

sample and the particulars of specifications mentioned in the contract he shall at once refer the matter to the Inspecting Officer and the Contractors shall also give intimation of such discrepancy to the Purchase Officer. The Contractor shall follow the instructions of the Inspecting Officer as to what sample of particulars should guide the production of stores and the decision of the Inspecting Officer in the matter shall be final and binding on the Contractor.

- (xxx) "e-Procurement" means the use of information and communication technology (specially the internet) by the procuring entity in conducting its procurement processes with bidders for the acquisition of goods (supplies), works and services with the aim of open, non-discriminatory and efficient procurement through transparent procedures;
- (xxxi) "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;
- (xxxii) "Inventory" means any material, component or product that is held for use at a later time;
- (xxxiii) "Invitation to (pre-)qualify" means a document including any amendment thereto published by the procuring entity inviting offers for pre-qualification from prospective bidders;
- (xxxiv) "Invitation to register" means a document including any amendment thereto published by the procuring entity inviting offers for bidder registration from prospective bidders;
- (xxxv) "Class-I local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meet the minimum local content as prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017¹;
- (xxxvi) "Class-II local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, meets the minimum local content as prescribed for 'Class-II local supplier' but less than that prescribed for 'Class-I local supplier' under the Public Procurement (Preference to Make in India), Order 2017¹ above;
- (xxxvii) "Local Content" means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent¹ above.
- (xxxviii) "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;

¹Notified vide Order No. P-45021/2/2017-PP (BE-II) dated 16.09.2020 issued by Department of Promotion of Industry and Internal Trade.

- (xxxix) "Non-Local supplier" means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than that prescribed for 'Class-II local supplier' under the Public Procurement (Preference to Make in India), Order 2017¹ above;
- (xl) "(Public) Procurement Guidelines" means guidelines applicable to Public Procurement, consisting of under relevant context a set of – i) Statutory Provisions (The Constitution of India; Indian Contract Act, 1872; Sales of Goods Act, 1930; and other laws as relevant to the context); ii) Rules & Regulations (General Financial Rules, 2017; Delegation of Financial Power Rules and any other regulation so declared by the Government); iii) Manuals for Procurement (of Goods; Works; Consultancy Services or any for other category) promulgated by the Ministry of Finance and iv) RailTel's procurement manuals relevant to the context (Codes, Manuals and Standard Bidding Documents);
- (xli) "Rate contract" (or the term 'framework agreement' in certain contexts) means an agreement between a Central Purchase Organisation or procuring entity with one or more bidders, valid for a specified period of time, which sets out terms and conditions under which specific procurements can be made during the term of the agreement and may include an agreement on prices which may be either predetermined or be determined at the stage of actual procurement through competition or a predefined process allowing their revision without further competition;
- (xlii) "Registering authority" means an authority which registers bidders for different categories of procurement.
- (xliii) "Registered Supplier" means any supplier who is on a list of registered suppliers of the procuring entity or a Central Purchase Organisation;
- (xliv) "Reverse auction" (or the term 'Electronic reverse auction' in certain contexts) means an online real-time purchasing technique utilised by the procuring entity to select the successful bid, which involves presentation by bidders of successively more favourable bids during a scheduled period of time and automatic evaluation of bids;
- (xlv) "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 but does not include appointment of an individual made under any law, rules, regulations or order issued in this behalf;

Chapter 2: Materials Management- An Introduction

2.1 Introduction

Cardinal Principle in good public procurement is to procure works, materials and services of the specified quality at the most competitive price in a fair, just and transparent manner at appropriate time in the interest of the Organization/Government.

Public procurement plays a vital role in economy/growth of the organization/country as approximately 20% of India's GDP gets converted into public procurement contracts. Departments like Defense, Telecom etc. use 50% of their funds/ budget for procurement of Goods and Services.

If good practices are not adopted in Public Procurement, it has multifold effects such as distortion of Market Mechanism, resulting into high cost to the procurer and poor quality of Goods and Services procured.

To ensure that these 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 (hereinafter referred as 'Procurement Guidelines') which provide framework for the public procurement system.

At the apex of the Statutory framework governing public procurement is Article 299 of the Constitution of India, which stipulates that contracts legally binding on the Government have to be executed in writing by officers specifically authorized to do so. The Constitution also enshrines Fundamental Rights (In particular Article 19 (1) (g) – Right to carry on a Profession) which have implications for Public Procurement. Further, 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 Public Procurement Transactions. There is no law exclusively governing public procurement.

However, comprehensive Rules and Regulations in this regard are available in the General Financial Rules (GFR), 2017, Government orders regarding product reservations or purchase preference or other facilities to sellers in Micro and Small Enterprises, Goods, works and services rendered with more than prescribed local content (Make in India), Registration of bidders from countries sharing land border with India, conditionality w.r.t Global Tender Enquiry and mandatory procurement of common used Goods and Services from Government e-Marketplace etc. to increase transparency and objectivity in public procurement.

2.2 About the Manual for Procurement of Goods

2.2.1 Modifications/Amendments in the Manual

- (i) *This Manual for Procurement of Goods is intended to facilitate the RailTel officials, to streamline and standardize procurement processes, ensuring efficiency, transparency, and compliance with relevant regulations and guidelines on public procurement.*

- (ii) *It is intended that the procurement manual be revised after every two years to reflect changes in procurement regulations, best practices, and technological advancements, ensuring that it remains a relevant and effective guide for all RailTel officials involved directly in the procurement process. However, modifications/ additions by way of amendments to this document will be issued from time to time with the approval of the Competent Authority.*
- (iii) *For revision, interpretation, clarification and issues relating to the Manual for Procurement of Goods, Director/ Project Operation and Maintenance, RailTel will be the nodal authority. The proposal for amendments will be put up based on need and necessity by the Infra Department. The Competent Authority for approval of amendments to any provision of this manual will be CMD, RailTel.*
- (iv) *The possibility of encountering situations necessitating justified deviations from the Policy cannot be ruled out. In such cases, the deviations shall be permitted for reasons to be placed on record on case by case basis with the approval of the Competent Authority.*
- (v) *The contents taken from GFR or quoted letter are in normal font. The additional explanatory paras are in italics*

2.2.2 Applicability of the Manual

- (i) **For procurements financed by Loans/Grants extended by International Agencies:** The Articles of Agreement with the International Agencies, like the World Bank, Asian Development Bank etc. stipulate specific procurement procedures to be followed by the borrowers. The procurement procedures, as finalized and incorporated in the Agreements after consideration and approval of the Ministry of Finance are to be followed accordingly.
- (ii) ***This procurement manual is applicable on CAPEX/OPEX for asset creation owned by RailTel:*** *Capital Expenditures (CAPEX) play a pivotal role in RailTel's strategy to enhance its telecommunication infrastructure across the country. CAPEX encompasses the funds RailTel allocates to acquire or upgrade tangible assets, from updating outdated communication equipment to integrating cutting-edge technology and possibly expanding its physical infrastructure network. Given the magnitude and significance of these investments, RailTel employs a rigorous and structured procurement procedure. This ensures not only the optimal utilization of its resources but also guarantees that RailTel receives the best possible value for its investments, fortifying its position as a leader in the telecommunication infrastructure sector. Furthermore, this manual specifically focuses on the procurement of goods and acquisitions made under the umbrella of such CAPEX endeavors. It serves as a guiding document, detailing the processes and best practices for RailTel for transparency, efficiency, and integrity in its CAPEX-related procurement activities.*
- (iii) *For procurements where RailTel is participating as a vendor/ service provider to any other agency/ customer including Government agency, the concerned Business policy of RailTel in this regard shall be applicable.*

2.3 Authorities competent to purchase goods and their Purchase Powers

A Competent authority which is competent to incur expenditure may sanction the purchase of goods required for use in accordance with the Schedule of Powers (SOP) of RailTel, CO. The Board of Directors of RailTel have full powers for procurement of Goods and Services, as per the SOP, which are delegated to the CMD, RailTel.

2.4 Basic Aims of Procurement – the Five R’s of Procurement

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

(i) Right Quality

Procurement aims to buy just the right quality that will suit the needs - 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.

(ii) 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.

(iii) 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 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.

(iv) Right Time and Place

If the material 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.

(v) 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 the needs (Credentials such as satisfactory past performance of contracts of same or similar nature).

2.5 Refined Concepts of Cost and Value – Value for Money

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

2.6 Fundamental Principles of Public Procurement

General Financial Rules, 2017 (*Rule 144*) lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in public procurement can be organised into five fundamental principles of public procurement, which all procuring authorities in RailTel must abide by and be accountable for:

(i) Transparency Principle

Procurers to ensure transparency, fairness, equality, competition and appeal rights. This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), equal opportunities (absence of discrimination) in processes. In essence Transparency Principle also enjoins upon the procurers to do only that which it had professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared'. As part of this principle, procurers within RailTel should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP).

(ii) Professionalism Principle

As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process. They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP) mentioned in Chapter 3 of this manual. They should, at the same time, ensure that the methodology adopted for procurement should not only be reasonable and appropriate for the cost and complexity but should also effectively achieve the planned objective of the procurement. As part of this principle, RailTel may setup

professional standards and specify suitable training and certification requirements for officials dealing with procurement matters.

In reference to the above two principles - Transparency and Professionalism Principle, It may be useful to refer to the provisions mentioned under Rule 144 of the General Financial Rules, 2017. GFR-General Financial Rules (GFRs) 2017 are a compilation of rules and orders of Government of India to be followed by all while dealing with matters involving public finances. These rules and orders are treated as executive instructions to be observed by all Departments and Organisations under the Government and specified Bodies except otherwise provided for in these Rules.

Rule 144. Fundamental principles of public buying: Fundamental principles of public buying (for all procurements including procurement of works). Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the following yardsticks:-

- a. The description of the subject matter of procurement to the extent practicable should --
 1. be objective, functional, generic and measurable and specify technical, qualitative and performance characteristics;
 2. not indicate a requirement for a particular trade mark, trade name or brand.
- b. The specifications in terms of quality, type etc., as also quantity of goods to be procured, should be clearly spelt out keeping in view the specific needs of the procuring organisations. The specifications so worked out should meet the basic needs of the organisation without including superfluous and non-essential features, which may result in unwarranted expenditure.
- c. Where applicable, the technical specifications shall, to the extent practicable, be based on the national technical regulations or recognized national standards or building codes, wherever such standards exist, and in their absence, be based on the relevant international standards. In case of Government of India funded projects abroad, the technical specifications may be framed based on requirements and standards of the host beneficiary Government, where such standards exist. Provided that a procuring entity may, for reasons to be recorded in writing, adopt any other technical specification².
- d. Care should also be taken to avoid purchasing quantities in excess of requirement to avoid inventory carrying costs;
- e. offers should be invited following a fair, transparent and reasonable procedure;

²It has been reiterated by Department of Expenditure vide OM F.N.12/17/2019-PPD dated 12.05.2020 that wherever Indian Technical specifications and Quality Certifications exists, the procuring entity should prescribe them. In those rare or exceptional cases where, despite the existence of Indian technical specifications, the procuring entity intends to specify foreign Technical Certifications and Accreditations, it must record its reasons in writing for adoption of such other technical specifications. This may also be subject to matter of audit.

- f. the procuring authority should be satisfied that the selected offer adequately meets the requirement in all respects;
- g. the procuring authority should satisfy itself that the price of the selected offer is reasonable and consistent with the quality required;
- h. at each stage of procurement, the concerned procuring authority must place on record, in precise terms, the considerations which weighed with it while taking the procurement decision.
- i. a complete schedule of procurement cycle from date of issuing the tender to date of issuing the contract should be published when the tender is issued.
- j. An annual procurement plan shall be prepared before the commencement of the year.
- k. Notwithstanding anything contained in these Rules, Department of Expenditure may, by order in writing, impose restrictions, including prior registration and/or screening, on procurement from bidders or bidders having commercial arrangements with an entity from, a country or countries, or a class of countries, on grounds of defence of India, or matters directly or indirectly related thereto including national security; no procurement shall be made in violation of such restrictions.³

The bullet point (k) above has been further explained by Department of Expenditure in the form of Order (Public Procurement) No. 4, that has been produced at para 2.9.5 below.

(iii) **Broader Obligations Principle**

Over and above transparency and professionalism, the procuring authorities have also the responsibility and accountability to conduct public procurement in a manner to facilitate achievement of the broader objectives of the Government - to the extent these are specifically included in the 'Procurement Guidelines':

- a. Preferential procurement from backward regions, weaker sections and MSEs, locally manufactured goods or services, to the extent specifically included in the 'Procurement Guidelines'; (Explained under para 2.9.2 and 2.9.4) and
- b. Reservation of procurement of specified class of goods from or through certain nominated CPSEs or Government Organisations, to the extent specifically included in the 'Procurement Guidelines'.
- c. Support to broader social policy and programme objectives of the Government (for example, economic growth, strengthening of local industry - make-in-India, Ease of Doing Business, job and employment creation, and so on, to the extent specifically included in the 'Procurement Guidelines').

³RailTel's letter No. RCIL-CO0PROJ(MISC)/1/2023-O/o ED/POM/CO/RCIL dated 24.02.2023 giving reference to notification F.No. DPE/7(4)/2017-Fin issued by Department of Public Enterprises, Ministry of Finance dated 24.02.2023 to all CPSEs for their information and strict compliance, that refers to the OM No. F.7/10/2021-PPD (1) issued by Department of Expenditure dated 23.02.2023, the Order (Public Procurement No. 4) which is in supersession of Order (Public Procurement No. 1) issued vide F.6/18/2019- PPD dated 23.07.2020, Order (Public Procurement No. 2) issued vide F.6/1 8/201 9-PPD dated 23.07.2020, Order (Public Procurement No. 3) issued vide F.6/1 8/201 9-PPD dated 24.07.2020, Office Memorandum (OM) No. F.18/37/2020-PPD dated 08.02.2021, OM No. F.12/1/2021-PPD(Pt) dated 02.03.2021 and OM No. F. 7/1 0/2021 -PPD dated 08.06.2021.

- d. Facilitating administrative goals of other Departments of Government (for example, ensuring tax or environmental compliance by participants, Energy Conservation, accessibility for People with Disabilities etc. to the extent specifically included in the 'Procurement Guidelines').

(iv) Extended Legal Responsibilities Principle

Procuring authorities must fulfil additional legal obligations in public procurement, over and above mere conformity to the mercantile laws (which even private sector procurements have to comply with). The Constitution of India has certain provisions regarding fundamental rights and public procurement. Courts have, over a time, taking a broader view of Public Procurement as a function of 'State', interpreted these to extend the responsibility and accountability of public procurement Authorities. Courts in India thus exercise additional judicial review (beyond contractual issues) over public procurement in relation to the manner of decision making in respect of fundamental rights, fair play and legality. Similarly, procuring authorities have also the responsibility and accountability to comply with the laws relating to Governance Issues like Right to Information (RTI) Act and Prevention of Corruption Act, and so on.

(v) Public Accountability Principle

Procuring authorities are accountable for all the above principles to several statutory and official bodies in the Country – the Legislature and its Committees, Central Vigilance Commission, Comptroller and Auditor General of India, Central Bureau of Investigations and so on– in addition to administrative accountability. As a result, each individual public procurement transaction is liable to be scrutinised independently, in isolation, besides judging the overall outcomes of procurement process over a period of time. Procuring authorities thus have responsibility and accountability for compliance of rules and procedures in each individual procurement transaction besides the achievement of overall procurement outcomes. The procuring authority, at each stage of procurement, must therefore place on record, in precise terms, the considerations which weighed with it while making the procurement decision from need assessment to fulfilment of need. Such records must be preserved, retained in easily retrievable form and made available to such oversight agencies. The procuring entity shall therefore maintain and retain audit trails, records and documents generated or received during its procurement proceedings, in chronological order, the files will be stored in an identified place and retrievable for scrutiny whenever needed without wastage of time. The documents and record will include:

- a. documents pertaining to determination of need for procurement;
- b. description of the subject matter of the procurement;
- c. Statement of the justification for choice of a procurement method other than open competitive bidding;
- d. Documents relating to pre-qualification and registration of bidders, if applicable.
- e. Particulars of issue, receipt, opening of the bids and the participating bidders at each stage;
- f. Requests for clarifications and any reply thereof including the clarifications given during pre-bid conferences;

- g. Bids evaluated, and documents relating to their evaluation; and
- h. Contracts and Contract Amendments;
- i. Complaint handling, correspondences with clients, consultants, banks.

2.7 Standards (Canons) of Financial Propriety

Public Procurement like any other expenditure in Government must conform to the Standards (also called Canons) of Financial Propriety.

Standards of Financial Propriety⁴: 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 Money 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.

Note: All Proposals involving financial implications except those which have been specifically exempted for this purpose should be referred to Finance Branch for advice before these are sanctioned⁵.

2.8 Central Public Procurement Portal

Central Public Procurement Portal (CPPP) has been designed, developed and hosted by National Informatics Centre (NIC, Ministry of Electronics & Information Technology) in association with Dept. of Expenditure to ensure transparency in the public procurement process.

The primary objective of the Central Public Procurement portal is to provide a single point access to the information on procurements made across various Ministries and the Departments. The CPPP has e-publishing and e-Procurement modules.

It is mandatory for all Ministries/Departments of the Central Government, Central Public Sector Enterprises (CPSEs) and Autonomous and Statutory Bodies to publish on the CPPP all their tender enquiries and information about the resulting contracts.

⁴ As stipulated under Rule 21 of the GFRs, 2017.

⁵ Notified vide Railway Board Letter No.80/RS (G) 779/58 dated 10.11.2008.

CPPP provides access to information such as documents relating to pre-qualification, Bidders' registration, Bidding documents; details of bidders, their pre-qualification, registration, exclusions/debarments; decisions taken regarding prequalification and selection of successful bid. It is also now mandatory to implement end-to-end e-Procurement for all procurements either through CPPP portal or any other suitable portal⁶.

2.9 Product Reservation and Preferential/Mandatory Purchase from certain sources

The Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services.

Note: Before considering any Purchase Preference/product reservation mentioned below, the procuring authority should check the latest directives in this regard for necessary action. Product Reservation/Purchase Preference provision shall invariably be part of the Notice Inviting Tender (NIT) and Instructions to Bidders (ITB).

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

To enable wider dispersal of enterprises in the country, particularly in rural areas, the Central Government Ministries or Departments or Public Sector Undertakings shall continue to procure items reserved for procurement exclusively from MSE, presently 358 (three hundred and fifty-eight) items including eight items of Handicrafts, from Micro and Small Enterprises, which have been reserved for exclusive purchase from them. The latest list may be seen from the website of the MSME Ministry⁷. The policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/ distributors/ Sole agent/ Work Contracts are excluded from the purview of the policy.

2.9.2 Public Procurement Policy for Micro and Small Enterprises (MSEs)

- (i) Government of India had enacted Micro, Small and Medium Enterprises Development (MSMED) Act in 2006. As per the powers conferred under Section 11 of the Act, Ministry of Micro, Small and Medium Enterprises (MoMSME), Government of India notified Procurement Policy for Micro and Small Enterprises, 2012 (amended 2018 and 2021). It is mandatory for the Central Government Ministries/ Departments including Public Sector Undertakings (PSUs) to follow the provisions of the policy while carrying out a procurement activity. Details of the policy along with the amendments issued in 2018, 2021 and 2022 are available on the MSME website⁸
- (ii) Under the amended Public Procurement Policy for MSEs, Order 2012 a minimum 25 per cent share out of the total annual procurement by RailTel are to be made from MSEs. As per the Policy Order 2012, MSEs are provided tender documents free of

⁶Mandatory Publication of tender enquiries on Central Public Procurement Portal (CPPP), Board's Letter No: 2010/RS (G)/779/10, dated 28.06.2016.

⁷<https://www.dcmsme.gov.in/schemes/Listof358itemsReserved.pdf>

⁸<http://dcmsme.gov.in/pppm.htm.aspx>

cost and are exempted from payment of earnest money, subject to furnishing of relevant valid certificate for claiming exemption.

- (iii) Out of 25% target of annual procurement from MSEs (Not in the specific tender), a sub-target of 4% of annual procurement from MSEs is earmarked for procurement from MSEs owned by Scheduled Caste (SC) / Scheduled Tribe (ST) entrepreneurs and 3% of annual procurement from MSEs is earmarked for procurement from MSEs owned by women entrepreneur. However, in event of failure of such MSEs to participate in tender process or meet tender requirements and L1 price, 4% sub-target for procurement earmarked for MSEs owned by SC/ST entrepreneurs and 3% earmarked to women entrepreneur will also be met from other MSEs.
- (iv) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy.
- (v) Chapter V of the MSMED Act, 2006 also has provision for ensuring timely payments to the MSE suppliers. 100% payment on or not exceeding 45th day from the date of delivery of goods/ services along with inspection certificate at the nominated place/Depot in good condition by the consignee. Where the department makes any objection in writing regarding acceptance of goods or services within fifteen days from the date of the delivery of goods at the nominated place/Consignee, the 100% payment will be made on or not exceeding the 45th day from the day on which such objection is removed by the employer. If a micro or small enterprise firm has not submitted any documentary evidence along with the tender documents to prove its status of micro or small enterprise, it would not be admissible to claim any benefit under the MSMED Act 2006 against the orders placed in the tender.
- (vi) The period agreed upon for payment must not exceed forty-five days after the supplies. For delays in payment the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times of the bank rate notified by the Reserve Bank. For arbitration and conciliation regarding recovery of such payments and interests, Micro and Small Enterprises Facilitation Council has been setup in states.
- (vii) In tender, participating Micro and Small Enterprises (MSE) quoting price within price band of L1+15 (fifteen) per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE and such MSE shall be allowed to supply up to 25 (twenty-five) per cent of total tendered value. The 25 (twenty-five) per cent quantity is to be distributed proportionately among these bidders, in case there are more than one MSMEs within such price band.
- (viii) Within this 25 (twenty five) per cent quantity, The sub-target for procurement from MSEs owned by SC/ST shall remain at 4% and for MSEs owned by Women the sub-target shall be 3% out of the total 25%. Such a purchase preference is reserved for MSEs owned by Scheduled Caste (SC)/ Scheduled Tribe (ST) entrepreneurs/MSEs owned by Women (if they participate in the tender process and match the L1 price).
 - a. In case of proprietary MSE, proprietor(s) shall be SC /ST.
 - b. In case of partnership MSE, the SC/ST partners shall be holding at least 51% (fifty-one percent) shares in the unit.

- c. In case of Private Limited Companies, at least 51% (fifty-one percent) share shall be held by SC/ST promoters.
- (ix) In case of tender item is non-splitable or non-dividable etc. MSE quoting price within price band L1+15% may be awarded for full/complete supply of total tendered value to MSE.
- (x) To develop MSE vendors so as to achieve their targets for MSEs procurement, Central Government Ministries /Departments /PSUs shall take necessary steps to develop appropriate vendors by organizing Vendor Development Programmes (VDPs) or Buyer-Seller Meets focused on developing MSEs for procurement through the Government e-Marketplace (GeM) portal. In order to develop vendors belonging to MSEs for Public Procurement Policy, the Ministry of MSME is regularly organizing State Level VDPs and National Level VDPs under the Procurement and Marketing Support Scheme. For enhancing participation of MSEs owned by SCs /STs/ Women in Government procurement, Central Government Ministries/ Departments/ CPSUs have to take the following steps:
- a. Special Vendor Development Programmes/ Buyer-Seller Meets would be conducted by Departments/ CPSUs for SC/STs and Women.
 - b. Outreach programmes will be conducted by National Small Industries Corporation (NSIC) to cover more and more MSEs from SC/STs under its schemes of consortia formation; and
 - c. NSIC would open a special window for SCs/ STs under its Single Point Registration Scheme (SPRS).
 - d. A National SC/ST hub scheme was launched in October, 2016, for providing handholding support to SC/ST entrepreneur which is being coordinated/ implemented by the NSIC under this Ministry.
- (xi) To enhance the competitiveness of Micro and Small Enterprises (MSEs) and to promote their business, Ministry of MSME has been implementing various schemes/programmes. The list of schemes is as below:
- a. Credit Linked Capital Subsidy for Technology Upgradation Scheme (CLCS-TUS)
 - b. Scheme of Fund for Regeneration of Traditional Industries (SFURTI)
 - c. Procurement and Marketing Support Scheme
 - d. Incubation Scheme
 - e. Marketing Assistance Scheme
 - f. Financial Support to MSMEs in ZED Certification Scheme
 - g. Skill Development Programme
 - h. International Cooperation Scheme
 - i. Lean Manufacturing Competitiveness for MSMEs
- (xii) *The FAQs pertaining to the procurement policy 2012 for MSE can be referred to the letter issued by Railway Board, Ministry of Railways⁹.*

⁹Railway Board letter No. 2022/RS(G)/363/1 dated 21.09.2022. The letter populates the FAQs pertaining to the Procurement Policy 2012 for MSEs dated 25.03.2022.

- (xiii) Where any Aggregator has been appointed by the Ministry of MSME, themselves quote on behalf of some MSE units, such offers will be considered as offers from MSE units and all such facilities would be extended to these also.
- (xiv) **The Policy is meant for procurement of only goods produced and services rendered by MSEs. Traders/ distributors/ sole agent/ Works Contract are excluded from the purview of the policy.**
- (xv) The MSEs must also indicate the terminal validity date of their registration. The registration should be valid on the date of submission of bid. Firm failing to submit the information, such offers will not be liable for consideration of benefits detailed in MSE Notification of Government of India dated 23.03.2012.
- (xvi) To monitor the progress of procurement by Central Government Ministries/ Departments and CPSUs from MSEs, Ministry of MSME has launched the MSME 'Sambandh'¹⁰ Portal on 8th December, 2017 for uploading procurement details by all CPSUs on a monthly and an annual basis which is regularly monitored by the Ministry.
- (xvii) To redress the grievances of MSEs related to non-compliance of the Policy a Grievance cell named "CHAMPION Portal" has been set up in the Ministry of MSME.

2.9.3 Key points to be considered w.r.t MSE Order under RailTel procurements

- (i) Tender of Maintenance of OFC network and associated infrastructure in O&M shall be under the category of Services. Therefore, MSEs may be given benefit under the Public Procurement Policy for MSEs order 2012, as applicable from time to time¹¹
- (ii) The above policy under para 2.9.3 (i) above shall be applicable for the future tenders published after the date of issue of this notification (i.e. post 27.06.2023). Relevant clause in tenders as required, should be suitably incorporated in this regard.
- (iii) Further, regarding exemptions to MSEs in works contract tenders, the following correspondence may be referred:

The Works contract is not covered under the purview of the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012.

- (iv) ***Only those MSEs shall be given the benefit under the MSE Procurement Policy, that are registered under Udyam Registration irrespective of relevance of product Category. Benefit/preferences shall be available to a consortium only when all the partners in the consortium are MSEs, complying all the conditions.***
- (v) The purchasers within RailTel are advised to include Trade Receivables Discounting System (TReDS) provision in the tender documents for facilitating MSEs payment through TReDS platform. In consideration of same Competent Authority in RailTel has approved following clauses in the tender document for this purpose¹²:
 - a. **For NIT:** "TReDS feature available" to be marked as yes, followed by the [URL:https://www/m1xchange.com](https://www/m1xchange.com)

¹⁰https://sambandh.msme.gov.in/PPP_Index.aspx

¹¹ Notified vide RCIL/CO/2017/O&M/Infrastructure/MSME/037/V-2 issued by RailTel dated 27.06.2023

¹² Letter No. RCIL-COOPROJ(MISC)/1/2023-O/o ED/POM/CO/RCIL dated 31.01.2023

b. For Tender Clause under MSME para:

1. "RailTel is registered with m1xchange TReDS Platform having Buyer registration Number "BUYER00001496". The URL for m1xchange Platform is <https://www.m1xchange.com>. MSE suppliers/vendors are required to register themselves on m1xchange Platform for availing the facility of bill discounting on TReDS portal. The bidder is mandatorily required to submit its TReDS registration number (as provided by m1xchange portal) and GRN (Goods/Service Receipt Note) Number (as provided by RailTel on delivery of Goods/Service) while submitting the invoices if requires to avail TReDS facility.
2. MSE Vendor will bear all costs relating to availing the facility of discounting on TReDS platform including but not limited to Registration charges, Transaction charges for financing, Discounting Charges, Interest on financing, or any other charges known by any name shall be borne by MSE Vendor.
3. MSE Vendor hereby agrees to indemnify, hold harmless and keep RailTel and its affiliates, Directors, officers, representatives, agents and employees indemnified, from any and all damages, losses, claims and liabilities (including legal costs) which may arise from Sellers submission, posting or display, participation, in any manner, on the TReDS Platform or from the use of Services or from the Buyer's breach of any of the terms and conditions of the Usage Terms or of this Agreement and any Applicable Law on a full indemnity basis.
4. RailTel shall not be liable for any special, indirect, punitive, incidental or consequential damages or any damages whatsoever (including but not limited to damages for loss of profits or savings, business interruption, loss of information), whether in contract, tort, equity or otherwise or any other damages resulting from using TReDS platform for discounting their (MSE Vendor's) invoices.

2.9.4 Public Procurement (Preference to make in India) Order, 2017

To encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment, Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India, issued Public Procurement (Preference to Make in India), Order 2017¹³. The order is issued pursuant to Rule 153 (iii) of GFR, 2017. The Order is applicable on the procurement of Goods, Works and Services. For the purpose of this Order:-

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

¹³Latest revision to the Order notified vide OM No. P-45021/2/2017-PP (BE-II) issued by DPIIT, dated 16.09.2020

- d. 'Procuring entity' means a Ministry or department or attached or subordinate office of, or autonomous body controlled by, the Government of India and includes Government companies as defined in the Companies Act.
- e. 'Works' means all works as per Rule 130 of GFR- 2017, and will also include 'turnkey works'.

(i) **Eligibility of 'Class-I local supplier'/ 'Class-II local supplier'/ 'Non-local suppliers' for different types of procurement**

- a. In procurement of all goods, services or works in respect of which the Nodal Ministry/ Department has communicated that there is sufficient local capacity and local competition, only 'Class-I local supplier', shall be eligible to bid irrespective of purchase value.
- b. Only 'Class-I local supplier' and 'Class-II local supplier', shall be eligible to bid in procurements undertaken by procuring entities, except when Global tender enquiry has been issued. In global tender enquiries, 'Non-local suppliers' shall also be eligible to bid along with 'Class-I local suppliers' and 'Class-II local suppliers'. In procurement of all goods, services or works, not covered by sub-para (i)(a) above, and with estimated value of purchases less than Rs. 200 Crore, in accordance with Rule 161(iv) of GFR, 2017, Global tender enquiry shall not be issued except with the approval of competent authority as designated by Department of Expenditure.
- c. For the purpose of this Order, works includes Engineering, Procurement and Construction (EPC) contracts and services include System Integrator (SI) contracts.

(ii) **Purchase Preference**

- a. Subject to the provisions of the Order and to any specific instructions issued by the Nodal Ministry or in pursuance of the Order, purchase preference shall be given to 'Class-I local supplier' in procurements undertaken by procuring entities in the manner specified here under.
- b. In the procurements of goods or works, which are covered by para (i)(b) above and which are divisible in nature, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 - 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
 - 2. If L1 bid is not a 'Class-I local supplier', 50 (fifty) percent of the order quantity shall be awarded to L1. Thereafter, the lowest bidder among the 'Class-I local supplier' will be invited to match the L1 price for the remaining 50 (fifty) percent quantity subject to the Class-I local supplier's quoted price falling within the margin of purchase preference, and contract for that quantity shall be awarded to such 'Class-I local supplier' subject to matching the L1 price. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price or accepts less than the offered quantity, the next higher 'Class-I local supplier' within the margin of purchase preference shall be invited to match the L1 price for remaining quantity and so on, and contract shall be awarded accordingly. In

case some quantity is still left uncovered on Class-I local suppliers, then such balance quantity may also be ordered on the L1 bidder.

- c. In the procurements of goods or works, which are covered by para (i)(b) above and which are not divisible in nature, and in procurement of services where the bid is evaluated on price alone, the 'Class-I local supplier' shall get purchase preference over 'Class-II local supplier' as well as 'Non-local supplier', as per following procedure:
 1. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract will be awarded to L1.
 2. If L1 is not 'Class-I local supplier', the lowest bidder among the 'Class-I local supplier', will be invited to match the L1 price subject to Class-I local supplier's quoted price falling within the margin of purchase preference, and the contract shall be awarded to such 'Class-I local supplier' subject to matching the L1 price.
 3. In case such lowest eligible 'Class-I local supplier' fails to match the L1 price, the 'Class-I local supplier' with the next higher bid within the margin of purchase preference shall be invited to match the L1 price and so on and contract shall be awarded accordingly. In case none of the 'Class-I local supplier' within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.
 4. "Class-II local supplier" will not get purchase preference in any procurement, undertaken by procuring entities.

(iii) **Applicability in tenders where contract is to be awarded to multiple bidders**

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

- a. In case there is sufficient local capacity and competition for the item to be procured, as notified by the nodal Ministry, only Class I local suppliers shall be eligible to bid. As such, the multiple suppliers, who would be awarded the contract, should be all and only 'Class I Local suppliers'.
- b. In other cases, 'Class II local suppliers' and 'Non local suppliers' may also participate in the bidding process along with 'Class I Local suppliers' as per provisions of the Order.
- c. If 'Class I Local suppliers' qualify for award of contract for at least 50 (fifty) percent of the tendered quantity in any tender, the contract may be awarded to all the qualified bidders as per award criteria stipulated in the bid documents. However, in case 'Class I Local suppliers' do not qualify for award of contract for at least 50 (fifty) percent of the tendered quantity, purchase preference should be given to the 'Class I local supplier' over 'Class II local suppliers'/'Non local suppliers' provided that their quoted rate falls within 20 (twenty) percent margin of purchase preference of the highest quoted bidder considered for award of contract so as to

ensure that the 'Class I Local suppliers' taken in totality are considered for award of contract for at least 50 (fifty) percent of the tendered quantity.

- d. First purchase preference has to be given to the lowest quoting 'Class-I local supplier', whose quoted rates fall within 20 (twenty) percent margin of purchase preference, subject to its meeting the prescribed criteria for award of contract as also the constraint of maximum quantity that can be sourced from any single supplier. If the lowest quoting 'Class-I local supplier', does not qualify for purchase preference because of aforesaid constraints or does not accept the offered quantity, an opportunity may be given to next higher 'Class-I local supplier', falling within 20 (twenty) percent margin of purchase preference, and so on.
 - e. To avoid any ambiguity during bid evaluation process, the procuring entities may stipulate its own tender specific criteria for award of contract amongst different bidders including the procedure for purchase preference to 'Class-I local supplier' within the broad policy guidelines stipulated in sub-paras above.
- (iv) **Exemption of small purchases:** Notwithstanding anything contained in paragraph (i), procurements where the estimated value to be procured is less than Rs. 5 lakhs shall be exempt from the Order. However, it shall be ensured by procuring entities that procurement is not split for the purpose of avoiding the provisions of this Order.
- (v) **Minimum local content:** The 'local content' requirement to categorize a supplier as 'Class-I local supplier' is minimum 50 (fifty) percent. For 'Class-II local supplier', the 'local content' requirement is minimum 20 (twenty) percent. Nodal Ministry/ Department may prescribe only a higher percentage of minimum local content requirement to categorize a supplier as 'Class-I local supplier'/ 'Class-II local supplier'. For the items, for which Nodal Ministry/ Department has not prescribed higher minimum local content notification under the Order, it shall be 50 (fifty) percent and 20 (twenty) percent for 'Class-I local supplier'/ 'Class-II local supplier' respectively.
- (vi) **Requirement for specification in advance:** The minimum local content, the margin of purchase preference and the procedure for preference to Make in India shall be specified in the notice inviting tenders or other form of procurement solicitation and shall not be varied during a particular procurement transaction.
- (vii) **Verification of local content:**
- a. The 'Class-I local supplier'/ 'Class-II local supplier' at the time of tender, bidding or solicitation shall be required to indicate percentage of local content and provide self-certification that the item offered meets the local content requirement for 'Class-I local supplier'/ 'Class-II local supplier', as the case may be. They shall also give details of the location(s) at which the local value addition is made.
 - b. In cases of procurement for a value in excess of Rs. 10 crores, the 'Class-I local supplier'/ 'Class-II local supplier' shall be required to provide a certificate from the statutory auditor or cost auditor of the company (in the case of companies) or from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies) giving the percentage of local content.
 - c. Decisions on complaints relating to implementation of this Order shall be taken by the competent authority (as per the RailTel's schedule of power) which is

empowered to look into procurement-related complaints relating to the procurements done by RailTel.

- d. The policy states that the Procuring Nodal Ministries may constitute committees with internal and external experts for independent verification of self-declarations and auditor's/ accountant's certificates on random basis and in the case of complaints. The same approach may be carried out by RailTel, with a fee that may be prescribed for such complaints.
- e. False declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rules for which a bidder or its successors can be debarred for up to two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law, or for the period as deemed fit by RailTel.
- f. A supplier who has been debarred by RailTel/other procurement entities for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity/RailTel for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under para 3.4 on debarment.

(viii) **Specifications in Tenders and other procurement solicitations:**

- a. RailTel shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
- b. It shall be endeavored to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.
- c. RailTel shall review all existing eligibility norms and conditions with reference to subparagraphs (viii) (a) and (b) above.

d. **Reciprocity Clause**

- 1. The policy states that when a Nodal Ministry/Department identifies that Indian suppliers of an item are not allowed to participate and/ or compete in procurement by any foreign government, due to restrictive tender conditions which have direct or indirect effect of barring Indian companies such as registration in the procuring country, execution of projects of specific value in the procuring country etc., it shall provide such details to all its procuring entities including CMDs/CEOs of PSEs/PSUs, State Governments and other procurement agencies under their administrative control and GeM for appropriate reciprocal action. RailTel procuring officials shall keep account of any such instructions issued by their Nodal Ministry/ Department.
- 2. Entities of countries which have been identified by the nodal Ministry/Department as not allowing Indian companies to participate in their Government procurement for any item related to that nodal Ministry shall not

be allowed to participate in the tenders of RailTel, except for the list of items published by the Ministry/ Department permitting their participation.

3. The stipulation in (2) above shall be part of all tenders invited by RailTel. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
 4. The term 'entity' of a country shall have the same meaning as under the FDI Policy of DPIIT as amended from time to time.
- e. Specifying foreign certifications/ unreasonable technical specifications/ brands/ models in the bid document is restrictive and discriminatory practice against local suppliers. If foreign certification is required to be stipulated because of non-availability of Indian Standards and/or for any other reason, the same shall be done only after written approval of Secretary of the Department concerned or any other Authority having been designated such power by the Secretary of the Department concerned.
- f. As per the policy requirement all administrative Ministries/Departments whose procurement exceeds Rs. 1000 Crore per annum shall notify/ update their procurement projections every year, including those of the PSEs/PSUs, for the next 5 years on their respective website.
- (ix) **Action for non-compliance of the Provisions of the Order:** In case restrictive or discriminatory conditions against domestic suppliers are included in bid documents, an inquiry shall be conducted by the Administrative Department undertaking the procurement (including procurement by any entity under its administrative control) to fix responsibility for the same. Thereafter, appropriate action, administrative or otherwise, shall be taken against erring officials of procurement entities under relevant provisions. Intimation on all such actions shall be sent to the Standing Committee.
- (x) **Assessment of supply base by Nodal Ministries:** The Nodal Ministry¹⁴ shall keep in view the domestic manufacturing / supply base and assess the available capacity and the extent of local competition while identifying items and prescribing the higher minimum local content or the manner of its calculation, with a view to avoiding cost increase from the operation of this Order.
- (xi) **Increase in minimum local content:** The Nodal Ministry may annually review the local content requirements with a view to increasing them, subject to availability of sufficient local competition with adequate quality.
- (xii) **Manufacture under license/ technology collaboration agreements with phased indigenization**
- a. While notifying the minimum local content, Nodal Ministries may make special provisions for exempting suppliers from meeting the stipulated local content if the product is being manufactured in India under a license from a foreign manufacturer who holds intellectual property rights and where there is a technology collaboration

¹⁴ In the case of RailTel the nodal ministry shall be Department of Telecommunications, or in the case of electronic items, Ministry of Electronics & Information Technology (MeiTY).

agreement / transfer of technology agreement for indigenous manufacture of a product developed abroad with clear phasing of increase in local content.

- b. In procurement of all goods, services or works in respect of which there is substantial quantity of public procurement and for which the nodal ministry has not notified that there is sufficient local capacity and local competition, the concerned nodal ministry shall notify an upper threshold value of procurement beyond which foreign companies shall enter into a joint venture with an Indian company to participate in the tender. RailTel, while procuring such items beyond the notified threshold value, shall prescribe in their respective tenders that foreign companies may enter into a joint venture with an Indian company to participate in the tender.

(xiii) **Powers to grant exemption and to reduce minimum local content:** The administrative Department undertaking the procurement (including procurement by any entity under its administrative control), with the approval of their Minister-in-charge, may by written order, for reasons to be recorded in writing to:

- a. reduce the minimum local content below the prescribed level; or
- b. reduce the margin of purchase preference below 20 (twenty) percent; or
- c. exempt any particular item or supplying entities from the operation of this Order or any part of the Order.

A copy of every such order shall be provided to the Standing Committee and concerned Nodal Ministry/ Department. The Nodal Ministry/ Department concerned will continue to have the power to vary its notification on Minimum Local Content.

(xiv) **Standing Committee.** A standing committee is hereby constituted with the following membership:

- a. Secretary, Department for Promotion of Industry and Internal Trade-Chairman
- b. Secretary, Commerce-Member
- c. Secretary, Ministry of Electronics and Information Technology-Member
- d. Joint Secretary (Public Procurement), Department of Expenditure-Member
- e. Joint Secretary (DPIIT)-Member-Convenor

The Secretary of the Department concerned with a particular item shall be a member in respect of issues relating to such item. The Chairman of the Committee may co-opt technical experts as relevant to any issue or class of issues under its consideration.

(xv) **Functions of Standing Committee:** The Standing Committee shall meet as often as necessary, but not less than once in six months. The Committee:

- a. shall oversee the implementation of this order and issues arising there from, and make recommendations to Nodal Ministries and procuring entities.
- b. shall annually assess and periodically monitor compliance with this Order
- c. shall identify Nodal Ministries and the allocation of items among them for issue of notifications on minimum local content
- d. may require furnishing of details or returns regarding compliance with this Order and related matters

- e. may, during the annual review or otherwise, assess issues, if any, where it is felt that the manner of implementation of the order results in any restrictive practices, cartelization or increase in public expenditure and suggest remedial measures
 - f. may examine cases covered by paragraph (xiii) above relating to manufacture under license/ technology transfer agreements with a view to satisfying itself that adequate mechanisms exist for enforcement of such agreements and for attaining the underlying objective of progressive indigenization
 - g. may consider any other issue relating to this Order which may arise
- (xvi) **Removal of difficulties:** Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of the Order.

2.9.4.1 Key considerations w.r.t Make in India Order (PMI policy) for RailTel procurements

- (i) *Department of Telecommunications (DOT) has been identified as the nodal agency for implementing the provisions related to procurement of goods, services or works related to telecom sector of the PMI policy issued by DPIIT¹⁵, that was disseminated by RailTel on 17.02.2023¹⁶.*
- (ii) *DoT PPP-MII order dated 29.08.2018 is applicable for Railway works/projects as well irrespective of the source of fund. DOT has informed that it is still to notify the list of goods, services and works with reference to para 3(a) of DPIIT PPP-MII order dated 16.09.2020. Para 3(a) mandates that for notified products, procurement is to be done only from class-I local suppliers irrespective of purchase value. However, for procurement of telecom Services, goods & works, all other clauses of DPIIT PPP-MII order dated 16.09.2020 will be applicable. Further, the minimum local content as per DOT's notification dated 29.08.2018 for certain telecom products remain valid for all other provisions of DPIIT PPP-MII orders with regard to "local content"¹⁷*
- (iii) *DPIIT has clarified¹⁸ that bidders offering imported products will fall under the category of non-local suppliers. Bidders can't claim themselves as Class-I/II local suppliers by claiming the services such as transportation, insurance, installation, commissioning, training, and after sale service support like AMC/CMC etc. as local value addition. (the notification is placed at Annexure-II in the letter of RailTel dated 17.02.2023).*
- (iv) *DPIIT's guidelines communicated by Railway Board¹⁹ (placed at Annexure V in the letter of RailTel dated 17.02.2023) indicates common examples of "Restrictive and Discriminatory Conditions against Local Suppliers" and "other conditions" which make the*

¹⁵ Notified vide No. 2019/Tele/15(18)4 Pt. (eOffice: 3317053) issued by Railway Board, Ministry of Railways dated 14.02.2023.

¹⁶ Letter No. RCIL-CO0PROJ(MISC)/1/2023-O/o ED/POM/RCIL dated 17.02.2023.

¹⁷Notified vide Letter No. 2020/Tele/15(18)/4(3317053) issued by Railway Board, Ministry of Railways dated 05.04.2023.

¹⁸ OM No. P-45021/102/2019 BE-II Part-1 issued by DPIIT, Ministry of Commerce dated 04.03.2021.

¹⁹No. 2020/Tele/15(18)/4-PART(1) (3416151) issued by Railway Board, Ministry of Railways dated 29.12.2022

bid non-compliant to PPP-MII orders. The common examples have been mentioned under Annexure-1 of this Manual.

- (v) *Ministry of Electronics and Information Technology (MeitY), Government of India in furtherance to the Public Procurement (Preference to Make in India) Order 2017 notified²⁰ a list of electronic products along with the requirement of local content in percentage. The same may be referred to during the procurement of the listed electronic products. It is advised that the purchaser should check the website of MeitY and/ or DPIIT to check the latest notification pertaining to the requirement of local content within a product before proceeding with the procurement process.*
- (vi) *It should be clearly mentioned in the tender document that the procurement is divisible or not divisible.*
- (vii) *The FAQs related to the Public Procurement (Preference to Make in India) Order 2017 can be referred to the OM circulated by the Railway Board, Ministry of Railways²¹.*

2.9.5 Registration of Bidders belonging to Countries Sharing Land Border with India³

(i) Requirement of registration

- a. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. The information on Competent Authority is given in para (x) below.
- b. Any bidder (including an Indian bidder) who has a Specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India will be eligible to bid in any procurement, whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority, specified in para (x) below.
- c. The requirement of registration for cases covered by para (a) above has been applicable since 23.07.2020. The requirement of registration for bidders covered by para (b) above will be applicable for all procurements where tenders are issued/ published after 01.04.2023.
- d. In tenders issued after 23.07.2020 or 01.04.2023, as the case may be, the provisions of requirement of registration of bidders and of other relevant provisions of this Order shall be incorporated in the tender conditions.

(ii) Applicability

- a. Being a Central Public Sector Enterprise the Order is applicable on the procurements done by RailTel.
- b. The Order is not applicable:

²⁰ F.No.33(1)/2017-IPHW issued by Ministry of Electronics and Information Technology, Government of India dated 14.09.2017.

²¹ Circulated vide OM No. 2022/RS(G)/709/4 by Railway Board, Ministry of Railways dated 03.12.2022

1. In projects which receive international funding with the approval of the Department of Economic Affairs (DEA), Ministry of Finance, the procurement guidelines applicable to the project shall normally be followed, notwithstanding anything contained in this order and without reference to the Competent Authority. Exceptions to this shall be decided in consultation with DEA.
2. On procurements made by Indian missions and by offices of government agencies/ undertakings located outside India.
3. On bidders (or entities) from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given on the website of the Ministry of External Affairs²².
4. On procurement of spare parts and other essential service support like Annual Maintenance Contract (AMC)/ Comprehensive Maintenance Contract (CMC), including consumables for closed systems, from Original Equipment Manufacturers (OEMs) or their authorized agents, shall be exempted from the requirement of registration.

(iii) **Definitions**

- a. "Bidder" for the purpose of the Order (including the term 'tenderer', 'consultant' 'vendor' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- b. "Tender" for the purpose of the Order will include other forms of procurement, except where the context requires otherwise.
- c. "Transfer of Technology" means dissemination and transfer of all forms of commercially usable knowledge such as transfer of know-how, skills, technical expertise, designs, processes and procedures, trade secrets, which enables the acquirer of such technology to perform activities using the transferred technology independently. (Matters of interpretation of this term shall be referred to the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade, and the interpretation of the Committee shall be final.)
- d. "Specified Transfer of Technology" means a transfer of technology in the sectors and/ or technologies, specified in paragraph 5, occurring on or after 23.07.2020.
- e. "Bidder (or entity) from a country which shares a land border with India" for the purpose of the Order means
 1. An entity incorporated, established or registered in such a country; or

²²<https://mea.gov.in/Lines-of-Credit-for-Development-Projects.htm>

2. A subsidiary of an entity incorporated, established or registered in such a country; or
 3. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 4. An entity whose beneficial owner is situated in such a country; or
 5. An Indian (or other) agent of such an entity; or
 6. A natural person who is a citizen of such a country; or
 7. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- f. "Agent" for the purpose of the Order is a person employed to do any act for another, or to represent another in dealings with third persons.
1. A person who procures and supplies finished goods from an entity from a country which shares a land border with India will, regardless of the nature of his legal or commercial relationship with the producer of the goods, be deemed to be an Agent for the purpose of this Order.
 2. However, a bidder who only procures raw material, components etc. from an entity from a country which shares a land border with India and then manufactures or converts them into other goods will not be treated as an Agent

(iv) **Beneficial owner for the purposes of point e(4) will be as under:**

- a. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person(s), has a controlling ownership interest or who exercises control through other means.
 1. "Controlling ownership interest" means ownership of, or entitlement to, more than twenty-five per cent of shares or capital or profits of the company;
 2. "Control" shall include the right to appoint the majority of the directors or to control the management or policy decisions, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- b. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- c. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- d. Where no natural person is identified under (iv) (a), (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

- e. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- (v) **Sensitive Sectors/ Technologies** (relevant only for the provisions on ToT arrangements):
- a. Certain sectors and technologies have been identified as sensitive from the national security point of view. The sectors listed in Schedule I to this Order are considered Category-I sensitive sectors. The sectors listed in Schedule II to this Order are considered Category-II sensitive sectors. The technologies listed in Schedule III are considered sensitive technologies.

List of Category-I Sensitive sectors (Schedule-I)

S.No	Sectors
1	Atomic Energy
2	Broadcasting/ Print and Digital Media
3	Defence
4	Space
5	Telecommunications

List of Category-II Sensitive sectors (Schedule-II)

S.No	Sectors
1	Power and Energy (including exploration/ generation/ transmission/ distribution/ pipeline)
2	Banking and Finance including Insurance
3	Civil Aviation
4	Construction of ports and dams & river valley projects
5	Electronics and Microelectronics
6	Meteorology and Ocean Observation
7	Mining and extraction (including deep sea projects)
8	Railways
9	Pharmaceuticals & Medical Devices
10	Agriculture
11	Health
12	Urban Transportation

List of Sensitive Technologies (Schedule-III)

S.No	Sectors
1	Additive Manufacturing (e.g. 3D Printing)
2	Any equipment having electronic programmable components or autonomous systems (e.g. SCADA systems)
3	Any technology used for uploading and streaming of data including broadcasting, satellite communication etc.
4	Chemical Technologies
5	Biotechnologies including Genetic Engineering and Biological Technologies
6	Information and Communication Technologies
7	Software

- b. For Category-I sensitive sectors, bidders with ToT arrangement in any technology with an entity from a country which shares a land border with India shall require registration.
- c. For Category-II sensitive sectors, bidders with ToT arrangement in the sensitive technologies listed in Schedule III, with an entity from a country which shares a land border with India shall require registration.
- d. In Category-II sensitive sectors, the Secretary (or an officer not below the rank of Joint Secretary to Government of India, so authorized by the Secretary) of the Ministry/ Department of the Government of India is empowered, after due consideration, to waive the requirement of registration for a particular item/ application or a class of items/ applications from the requirement of registration, even if included in Schedule III. The Ministry/ Department concerned shall intimate the Department for Promotion of Industry and Internal Trade (DPIIT) and National Security Council Secretariat (NSCS) of their decision to waive the requirement of registration. Ministries/ Departments of the Government of India are not required to consult the DPIIT/ NSCS before deciding and are only required to intimate the decision to DPIIT/ NSCS. If any point is raised by DPIIT/ NSCS, it should be considered in future procurements; ongoing procurement for which the waiver was granted need not be interrupted or altered.
- e. Based on security considerations, a Ministry/ Department in a Category II sensitive sector or other Ministries/ Departments may recommend to DPIIT inclusion of any other technology in the list of sensitive technologies, either generally or for their Ministry/ Department.

(vi) **Sub-contracting in works contracts**

In works contracts, including turnkey contracts, contractors shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of “contractor from a country which shares a land border with India” shall be as in paragraph (iii) (e) above. This shall not apply to sub-contracts already awarded on or before the date of the Order (i.e. 23rd July, 2020).

[Note: Procurement of raw material, components, etc. does not constitute sub-contracting]

(vii) **Certificate regarding compliance**

An undertaking shall be taken from bidders in the tender documents (Annexure 2) that the extant guidelines for participation in the tenders (which should include conditions for implementation of this Order) have been complied with. If such certificate given by a bidder whose bid accepted is found to be false, this would be a ground for debarment and further legal action in accordance with law.

(viii) **Validity of registration**

In respect of tenders, registration should be valid at the time of submission of bids and at the time of acceptance of bids. In respect of supply otherwise than by tender, registration should be valid at the time of placement of order. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

(ix) **Model Clauses/ Certificates**

The Model Clauses and Model Certificates to be inserted in the tenders of RailTel that shall be obtained from bidders as part of their bids are given at Annexure-2.

(x) **Competent Authority and Procedure for Registration**

- a. The Competent Authority for the purpose of registration under this Order shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)²³ [Notified vide OM No. F.6/18/2019-PPD issued by Department of Expenditure dated 23.07.2020]
- b. The Registration Committee shall have the following members
 1. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;
 2. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration;
 3. Any other officer whose presence is deemed necessary by the Chairman of the Committee.
- c. DPIIT has laid down the method of application, format etc. for such bidders as covered by the Order.
- d. On receipt of an application seeking registration from a bidder covered by para (i)(a) and (i)(b) of this Order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. registration shall not be given unless political and security clearance have both been received.
- e. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such application by them.
- f. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.
- g. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in para (ii) of this Order, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

²³ (i) In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para 11 (d) shall remain and no registration shall be granted without such clearance.

(ii) Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or by the Government of India and their agencies/ public enterprises etc.

- h. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.
- i. For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

(xi) **Exemptions from the restrictions under Rule 144 (xi) of GFRs**

CPSEs, that includes RailTel, are exempted from the restrictions put forth under the Rule 144 (xi) for the following items²⁴ up to 31.12.2024:

1. Solar PV Cells, Glass, Wafers, EVA, Backsheet, Frames
2. Inverters
3. Trackers
4. Battery Energy Storage System Components [Cells, Battery Packs, Power Conditioning System].

2.10 Proactive Information Disclosures

Section 4(1)(b) of the RTI Act lays down the information to be disclosed by public authorities on a suo moto or proactive basis and Section 4(2) and Section 4(3) prescribe the method of its dissemination to enhance transparency and also to reduce the need for filing individual RTI applications. The Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, has issued “Guidelines on suo moto disclosure under Section 4 of the RTI Act” vide their OM No.1/6/2011-IR dated 15th April, 2013. The relevant guidelines relating to information disclosure relating to procurement are reproduced below:

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

2.11 Materials Management

Materials Management can be defined as the function which is responsible for the Co-ordination of Planning, Sourcing, Purchasing, Moving and Controlling the materials in an optimum manner so as to provide good Service Levels to the customer at minimum Cost.

²⁴Circulated vide OM F.No.DPE/7(4)/2017-Fin, issued by Department of Public Enterprises dated 17.08.2022

- (i) **Planning and Sourcing:** Planning plays a very important role in assessing the quantity of the material, funds availability for purchase/procurement and selecting the right source for supply.
- (ii) **Procurement / Purchasing:** Procurement of an item does not necessarily mean purchasing. An item may be manufactured in the workshop or may be got transferred from another place as available. Alternatively, the item may be purchased from the market. There are two basic types of purchasing in business world – Purchasing for Re-Sale and Purchasing for Manufacturing or Consumption.
- (iii) **Inventory Control:** For giving better services and to get price advantage it may be necessary to buy in bulk (Economy of scale). But this may mean blocking of substantial amount of money and the inventory carrying costs also go up. Frequent procurement of the same item shall have high ordering costs and the advantages of Bulk procurement will be lost. While procuring, the Stock-out Costs, shall be taken into account. Stock-out costs is a critical concept in inventory management. Suppose, for a communications item, that RailTel plans to deploy in a project, is found to be out of stock (as a result of improper planning or unforeseen requirement), then immediate procurement of that item may be required. This accounts to direct and indirect costs. Direct costs may amount to emergency procurement costs or procurements done on limited or direct nomination basis, hampering the competition and not providing value for money. Indirect costs may include public service interruptions, delayed project implementation, administrative costs requiring additional administrative work, seeking emergency suppliers and reworking of the planned project. Stock-out should not be considered as a routine based justification for emergency or non-competitive procurements. Inventory control therefore, involves designing and following such policies, which will minimize sum total of various costs (the inventory carrying cost and ordering costs) related to materials in an Organisation.
- (iv) **Distribution:** Transportation and Distribution of raw materials, spares, consumables as well as finished products is an important activity as it involves substantial costs. Efficient & responsive distribution system is necessary for giving a good service.

Chapter 3: Ethics on Purchases

3.1 Code of Integrity for Public Procurement (CIPP)

3.1.1 Code of Integrity for Public Procurement

The Purchase Officials as well as Bidders, Suppliers, Contractors and Consultants should observe the highest standard of ethics and should not indulge in the prohibited practices, either directly or indirectly, at any stage during the procurement process or during execution of resultant contracts. The bidders/ suppliers should be asked to sign a declaration about abiding by CIPP in registration applications and in bid documents, with a warning that, in case of any transgression of this code, its name is not only liable to be removed from the list of registered bidders, but it would be liable for other punitive actions such as cancellation of contracts, debarment or action as per the directions of Competition Commission of India, and so on. The prohibited practices are:

- (i) **Corrupt practice:** Making offers, solicitation or acceptance of bribe, rewards or gifts or any material benefit, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or contract execution.
- (ii) **Fraudulent practice:** Any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. This includes making false declaration or providing false information for participation in a tender process or to secure a contract or in execution of the contract.
- (iii) **Anti-competitive practice:** Any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the Procuring Entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels.
- (iv) **Coercive practice:** Harming or threatening to harm, persons or their property to influence their participation in the procurement process or affect the execution of a contract.
- (v) **Conflict of interest:** Participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of Purchase Department who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Purchase Department with an intent to gain unfair advantage in the procurement process or for personal gain; and
- (vi) **Obstructive practice:** Materially impede the Procuring Entity's investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Purchase Department's rights of audit or access to information.

3.1.2 Obligations for Proactive Disclosures

- (i) The purchase officials as well as Bidders, Suppliers, Contractors and Consultants, are obliged under Code of Integrity for Public Procurement to Suo-Moto proactively declare any conflicts of interest (coming under the definition mentioned above – pre-existing or as and as soon as these arise at any stage) in any procurement process or execution of contract. Failure to do so would amount to violation of this code of integrity; and
- (ii) Any bidder must declare, whether asked or not in a bid document, any previous transgressions of such a code of integrity with any entity in any country during the last three years or of being debarred by any other Procuring Entity. Failure to do so would amount to violation of this code of integrity;
- (iii) To encourage voluntary disclosures, such declarations would not mean automatic disqualification for the bidder making such declarations. The declared conflict of interest may be evaluated and mitigation steps, if possible, may be taken by the Procuring Entity. Similarly voluntary reporting of previous transgressions of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder's actions in the tender and subsequent contract.

3.1.3 Punitive Provisions

Without prejudice to and in addition to the rights of the RailTel as the procuring entity to other penal provisions as per the bid documents or contract, if RailTel comes to a conclusion that a (prospective) bidder/supplier, directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the following measures including one or more may be taken by RailTel:

- (i) If his bids are under consideration in any procurement
 - a. Forfeiture or encashment of bid security;
 - b. Calling off of any pre-contract negotiations; and
 - c. Rejection and exclusion of the bidder from the procurement process.
- (ii) If a contract has already been awarded
 - a. Cancellation of the relevant contract and recovery of compensation for loss incurred by RailTel;
 - b. Forfeiture or encashment of any other security or bond relating to the procurement;
 - c. Recovery of payments including advance payments, if any, made by the Procuring Entity along with interest thereon at the prevailing rate.
- (iii) Provisions in addition to above:
 - a. Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Procuring Entity for a period not less than one year;
 - b. In case of anti-competitive practices, information for further processing may be filed under a signature of the General Manager level officer, with the Competition Commission of India.
 - c. Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

3.1.4 Conduct of Procuring Entity's Officials in Public Procurement

- (i) Hospitality must never be solicited, directly or indirectly. The frequency, scale and number of officials availing hospitality should not be allowed to identify the recipient in a public way with any particular contractor, supplier or service provider or raise doubts about its neutrality. It should not involve significant travel, overnight accommodation or trips abroad. Particular care should be taken in relation to offers of hospitality from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient.
- (ii) Gifts must never be solicited, directly or indirectly. An official should not accept and retain gifts more valuable than the limit as laid down in the conduct rules. Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount. Particular care should be taken in relation to gifts from firms (say participating in current or imminent tenders or its execution) who stand to derive a personal or commercial benefit from their relationship with the recipient. Any gift received inadvertently in violation of above, must immediately either be returned or else reported.
- (iii) Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including seeking or accepting special facilities or discounts on private purchases (particularly same items which are being ordered officially on rate contracts).
- (iv) Officials involved in Public Procurement must never indulge in any non-official pecuniary transaction with the contractors, suppliers or service providers with whom they have official dealings; including soliciting of sponsorship for unofficial and private cultural, social, sporting, religious, charitable or similar organisations or events.

3.2 Integrity Pact (IP)

The Pre-bid Integrity Pact is a tool to help Governments, businesses and civil society to fight corruption in public contracting. It binds both buyers and sellers to ethical conduct and transparency in all activities from pre-selection of bidders, bidding and contracting, implementation, completion and operation related to the contract. This removes insecurity of bidders, that while they themselves may abjure bribery, but their competitors may resort to it and win contract by unfair means. *CVC issued a revised Standard Operating procedure²⁵ w.r.t adoption and implementation of Integrity Pact.*

It is mandatory to incorporate Integrity Pact by RailTel *in all the tenders* above a threshold value *which is Rs.15 Crores.*

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

²⁵CVC Circular No.04/06/23 dated 14/06/2023

- (i) Promise on the part of the Procuring Entity to treat all bidders with equity and reason and not to seek or accept any benefit, which is not legally available;
- (ii) Promise on the part of bidders not to offer any benefit to the employees of the Procuring Entity not available legally and also not to commit any offence under Prevention of Corruption Act, 1988 or Indian Penal Code 1860;
- (iii) Promise on the part of bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts etc.
- (iv) Undertaking (as part of Fall Clause in the case of Rate Contracts) by the bidders that they have not and will not sell the same material/equipment at prices lower than the bid price;
- (v) Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- (vi) Bidders to disclose the payments to be made by them to agents/brokers or any other intermediary;
- (vii) Bidders to disclose any past transgressions committed over the specified period with any other company in India or Abroad that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the Competent Authority. The period for which such Transgression(s) is/are to be reported by the bidders shall be the last three years to be reckoned from the date of bid submission. The Transgression for which the cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the bidders.

3.2.1 Role of IEMs in Integrity Pact

- (i) Bidders or their authorised representative may address to the IEMs all the representations/grievances/complaints related to any discrimination on account of lack of fair play in modes of procurement and bidding systems, tendering method, eligibility conditions, bid evaluation criteria, commercial terms & conditions, choice of technology/specifications etc.
- (ii) The entire panel of IEMs should examine the matter jointly, who would look into the records, conduct an examination, and submit their joint recommendations to the Management of the Procuring Entity. If the entire panel is unavailable for unavoidable reasons, the available IEM(s) shall examine the complaints. Consent of the IEM(s), who may not be available, shall be taken on record. The IEMs would be provided access to all documents/records of the tender for which a complaint or issue is raised before them, as and when warranted.
- (iii) The role of IEM is advisory, and the advice of IEM is non-binding on the Organization; however, their advice would help properly implement the IP.
- (iv) IEM should examine the process integrity; they are not expected to concern themselves with fixing the responsibility of officers. IEMs should not associate CVO and /or the officials of the vigilance wing during the examination of the complaints in

any manner. A matter being examined by the IEMs can be separately investigated by the CVO if a complaint is received or directed to them by the CVC.

3.2.2 Systemic Improvements

- (i) RailTel shall hold quarterly meetings with the IEMs. A summary of contracts awarded in the previous quarter, covered under the IP, shall be shared with the IEMs during the quarterly meeting. Such a summary of contracts should include details like tender number, mode of tendering, the period allowed for publicity, number of bids received, number of bidders considered eligible, and name and address of the successful bidder.
- (ii) The above summary of contracts is to help the IEMs in analysing whether an appropriate mode of tendering is being adopted, i.e. limited tender mode or nomination mode is not unduly used, the number of bidders is not too low, a large number of bidders are not excluded while judging the eligibility or during the technical bid evaluation stage, and whether particular firm or set of specific firms is repeatedly getting contracts etc. Based on their analysis, the IEMs can suggest to the management suitable systemic improvement(s) and measures to improve objectivity in decision-making, capacity building, etc.
- (iii) It would be desirable to have structured meetings of the IEMs with the Chief Executives of the RailTel, on a half-yearly basis to discuss and review the information on tenders awarded during the preceding six-month period. Additional such meetings, however, can be held as per requirement. All such meetings should be minuted.

3.2.3 Dispute Mediation

In case of any dispute between the management and the contractor relating to those contracts where an Integrity Pact is applicable, in case both the parties are agreeable, they may try to settle the dispute through mediation before the panel of IEMs in a time-bound manner. If required, the organisations may adopt any mediation rules for this purpose. However, no more than five meetings shall be held for dispute resolution. Both parties shall equally share the fees/expenses on dispute resolution. If the dispute remains unresolved even after mediation by the panel of IEMs, the organisation may take further action as per the terms & conditions of the contract.

3.2.4 Coverage

The Integrity Pact Program will cover the following tenders/procurements: All tenders relating to procurement of OFC, quad cable, pre-fab shelters, electronic equipment's and its installations and/or commissioning etc. and other item(s) or activity/activities proposed to be carried out or required by the Company for the value exceeding Rs.15 crores at a time including for repair and maintenance of cable/network and any other items required for special works assigned to RailTel.

3.2.5 Implementation

Integrity Pact (IP) would be implemented through a panel of Independent External Monitors (IEMs).

- (i) Integrity Pact clause and format should be included in all the Tender Documents of the value exceeding Rs. 15 Crores. Each page of such Integrity pact proforma would be duly signed by Purchaser's competent signatory. All pages of the Integrity Pact are to

be returned by the bidder (along with the technical bid) duly signed by the same signatory who signed the bid, i.e., who is duly authorized to sign the bid and to make binding commitments on behalf of his company. Any bid not accompanied by Integrity Pact duly signed by the bidder shall be considered to be a non-responsive bid and may be rejected.

- (ii) In all tenders covered under the IP, particulars of all IEMs, including their email IDs, should be mentioned instead of mentioning details of a single IEM.
- (iii) Through an appropriate provision in the tender document, it has to be ensured that the Integrity Pact is deemed as part of the contract so that its conditions bind the parties concerned. A clause should be included in the IP that a person signing the IP shall not approach the Courts while representing the matters to IEMs, and they shall await their decision.
- (iv) In the case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In the case of sub-contracting, the Principal contractor shall take responsibility for the adoption of IP by the sub-contractor. It is to be ensured that all sub-contractors also sign the IP. In the case of sub-contractors, the TP shall be a tripartite arrangement to be signed by the Organization, the contractor, and the sub-contractor. In respect of a particular contract, the Integrity Pact shall be operative from the date both parties sign it.
- (v) The accompanying 'Integrity Pact' will be issued along with the bidding documents and will also be uploaded on the website.
- (vi) Bidder of Indian origins shall submit the Integrity Pact (in 2copies) on a nonjudicial stamp paper of Rs.100/-duly signed by the person signing the bid.
- (vii) Bidder of foreign origin may submit the Integrity Pact on its company's letter head, duly signed by the person signing the bid.
- (viii) If the bidder is a partnership or a consortium, the Integrity Pact shall be signed by all the partners or consortium members.
- (ix) The 'Integrity Pact' shall be returned by the Bidder duly signed along with the Bid in a separate envelope, duly superscripted with 'Integrity Pact'.
- (x) On behalf of RailTel, the Integrity pact will be signed by the concerned representative of the Procuring department in the Bid Opening Committee immediately on receipt of Integrity Pact signed by the Bidder at the time of Bid opening. One copy of the Integrity Pact shall be retained by RailTel and the 2nd copy will be issued to the representative of the bidders during bid opening. If the Bidders representative is not present during the Bid opening, the 2nd copy shall be sent to the bidder by post/courier.
- (xi) Bidder's failure to submit the Integrity Pact duly signed along with the Bid may lead to the rejection of the Bid.
- (xii) Bidder shall not change the contents of the Integrity pact.
- (xiii) All the pages of the Integrity Pact are to be signed by both RailTel and the Bidder.
- (xiv) Independent External Monitors (IEMs) are appointed by RailTel time to time for effective implementation & monitoring of Integrity Pact.

3.3 Procurement from Trusted Sources

- (i) RailTel by virtue of holding DoT licenses is providing network connectivity services viz., Internet Lease Line, Broadband Internet (RailWire), MPLS-VPN, P2P Lease Line to its customers. The services are to be strictly operationalised /provided as per the respective DoT's license conditions, amended from time to time, as deviation may attract monetary penalty from DoT, as well as cancellation of license²⁶.
- (ii) Further, in reference to the DoT notifications mentioned at (i) above, DoT has amended license conditions and same is to be complied by all license holders.
- (iii) As per the amendment to the existing license conditions, which has been come in to effect from 15-June-2021
 - a. The National Cyber Security Coordinator (NCSC) is the Designated Authority (DA).
 - b. The licensee shall provide any information as and when sought by DA.
 - c. The licensee shall only connect Trusted Products in its network and also seek permission from DA for upgradation of existing network utilizing the Telecommunication Equipment not designated as Trusted Products. However, these directions will not affect ongoing Annual Maintenance Contracts (AMC) or updates to existing equipment already inducted in the network as on date of effect
- (iv) Any new hardware/ software element put in the network of a Telecom Service Provider (TSP), should be from a 'Trusted Source' as decided by the NCSC. Broad Categories of equipment to be considered under Trusted Products are:
 - a. Core Equipment:
 - b. Access Equipment:
 - c. Transport Equipment:
 - d. Support Systems (Operational/Business/Security)
 - e. Customer Premise Equipment:
 - f. Above categories are elaborated in Annexre-02 of RailTel's letter No. RCIL/CO/2021/NTP/Trusted Telecom/01 dated 17.08.2021
- (v) Any hardware/ software element e.g. AAA Server for Railway Station WiFi or RailWire, OSS/BSS set-up, SDWAN controller provision, RailTel's Data Centre or Third Party Data Centre/ Cloud for managing bandwidth services provided to customers /captive use etc., which is put in 'licensee network 'or connects to 'licensee network and managed by licensee', should be from a trusted telecom source. The policy is also applicable to the scenarios where apportion of Railways' network is taken over by RailTel and integrated into RailTel's bandwidth network.
- (vi) RailTel has appointed a nodal officer to seek clarification(s)/ permission(s)/ submission(s) for Trusted Products from NCSC on behalf of RailTel. Nodal officer shall be responsible for providing undertaking of compliance to amended license conditions to NCSC, as and when asked by them.

²⁶ RailTel's letter No. RCIL/CO/2021/NTP/Trusted Telecom/01 dated 17.08.2021

- (vii) TSPs would need to share information about their Company, the products they intend to connect to their network, Product OEM and related details in the portal for evaluation as Trusted Product.
- (viii) As per the existing procedure, when Telecom Service Providers (TSPs) plan to procure directly from a Non-India Registered (NIR) OEM, the detailed information with regard to the OEM (company) and the product is to be provided in the Trusted Telecom Portal (TIP) by the TSPs. However, if the TSPs procure through India Registered OEMs, these inputs are provided in the portal by the Indian Registered OEMs (as per letter dated 06.07.2021 issued by DOT).
- (ix) Regions may further formally appoint a 'Sub Nodal' person to seek and forward clarification(s)/permission(s) for Trusted Product to the RailTel's appointed Nodal Officer. Also, the 'Sub Nodal' person shall be responsible for arranging undertaking of compliance to amended license conditions, to the RailTel's appointed Nodal Officer (on communication from NCSC), on behalf of their region, duly signed by respective Region Head.
- (x) At Corporate Office, concerned personnel may seek and forward clarification(s)/permission(s) for Trusted Product to the appointed Nodal Officer through their respective Head of Department (HoD). Concerned HoD(s) at CO shall need to submit undertaking of compliance to amended license conditions, to the appointed Nodal Officer (on communication from NCSC).

3.4 Debarment of Suppliers

- (i) Registration of suppliers and their eligibility to participate in Procurement Entity's procurements is subject to compliance with Code of Integrity for Public Procurement and good performance in contracts. Rule 151 of General Financial Rules (GFR), 2017 states the following regarding the 'Debarment from Bidding':-
 - a. A bidder shall be debarred if he has been convicted of an offence-
 - 1. under the Prevention of Corruption Act, 1988; or
 - 2. the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
 - b. A bidder debarred under sub-section (a) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.
 - c. A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

- d. The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment
- (ii) Since, DGS&D had been wind up on 31.10.2017, PPD, DoE did consultations on the issue of Debarment with major procuring Ministries/ Departments and issued the following 'Debarment Guidelines' in suppression to all earlier instructions on this subject²⁷.

3.4.1 Guidelines on Debarment of firms from Bidding

- (i) The guidelines are classified under following two types:-
 - a. In cases where debarment is proposed to be limited to a single Ministry, the appropriate Orders can be issued by that Ministry itself, thereby banning all its business dealing with the debarred firm.
 - b. Where it is proposed to extend the debarment beyond the jurisdiction of the particular Ministry i.e. covering to all central Ministries/ Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).
- (ii) Definitions
 - a. Firm: The term 'firm' or 'bidder' has the same meaning for the purpose of these Guidelines, which includes an individual or person, a company, a cooperative society, a Hindu undivided family and an association or body of persons, whether incorporated or not, engaged in trade or business.
 - b. Allied firm: All concerns which come within the sphere of effective influence of the debarred firms shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
 1. Whether the management is common;
 2. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
 3. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
 4. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
 5. All successor firms will also be considered as allied firms.

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

(iii) Debarment by a Single Ministry/ Department

Orders for Debarment of a firm(s) shall be passed by RailTel, keeping in view of the following:

- a. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.

²⁷Notified vide OM No. F.1/20/2018-PPD issued by Department of Expenditure dated 02.11.2021

- b. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017. (Refer to para 3.2 of this Manual for further reading on Code of Integrity).
 - c. A bidder can also be debarred for any actions or omissions by the bidder other than violation of code of integrity, which in the opinion of the RailTel, warrants debarment, for the reasons like supply of sub-standard material, non-supply of material, abandonment of works, sub-standard quality of works, failure to abide “Bid Securing Declaration” etc.
 - d. It shall be circulated to all concerned procuring entities of RailTel including Regions.
 - e. Before issuing the debarment order against a firm it must be ensured that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
 - f. Regional heads in Regions and executive authorized by Director/POM in Corporate Office will be the competent Authority to debar the firms.
 - g. RailTel that issued the order of debarment can also issue an order for revocation of debarment before the period of debarment is over if there is adequate justification for the same. Ordinarily, the revocation of the order before expiry of debarred period should be done with the approval as defined in para (f) above.
 - h. RailTel will maintain list of debarred firms, which will also be displayed on its website.
 - i. Debarment is an executive function and should not be allocated to Vigilance Department.
 - j. The period of debarment starts from the date of issue of debarment order; therefore, the process of debarment should be conducted in an expeditious manner. Considering the quasi-judicial nature of such proceedings and need to afford a fair hearing to the firm, following timeline is suggested, which may be suitably modified considering the specifics of RailTel:
 1. Noticing of delinquency of the firm by the Procuring Entity – zero day
 2. Evaluation of evidence and proposal to CA for banning of the firm - 2 Weeks
 3. Issue of Show Cause Notice to the firm calling for written and oral submission. – 1 week.
 4. Time for submission, including reminders etc – 3 weeks
 5. Evaluation of firm’s submission and giving oral hearing to firm – 3 weeks
 6. Final Order, indicating opportunity to the firm 2 weeks’ time to appeal to the Competent Authority as appellate authority – 2 weeks
 7. Total 12 weeks from zero day, after which debarment period starts.
 8. Receipt of Appeal and disposal the same by the appellate authority – 4 weeks.
- (iv) It is possible that the firm may be debarred concurrently by more than one Ministry/ Department. Ministries/ Departments at their option may also delegate powers to

debar bidders to their CPSUs, Attached Offices/ Autonomous Bodies etc. In such cases, broad principles for debarment in para (iii) as above are to be kept in mind. Debarment by such bodies like CPSUs etc. shall be applicable only for the procurements made by such bodies. Similarly, Government e-Marketplace (GeM) can also debar bidders up to two years on its portal.

(v) Debarment across All Ministries/ Departments

- a. Where a Ministry/ Department is of the view that business dealings with a particular firm should be banned across all the Ministries/ Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Ministries/ Departments, the Ministry/ Department concerned, should after obtaining the approval of the Secretary concerned, forward to DoE a self-contained note setting out all the facts of the case and the justification for the proposed debarment, along with all the relevant papers and documents. DoE will issue the necessary orders after satisfying itself that proposed debarment across all the Ministries/ Departments is in accordance with Rule 151 of GFRs, 2017. This scrutiny is intended to ensure uniformity of treatment in all cases.
- b. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision taken by DoE, only in the Ministry/ Department forwarding such proposal. For this purpose, the proposing Ministry shall complete all formalities for debarment as per para (iii) (Debarment by a Single Ministry/ Department) above and issue an interim order debarring the firm from taking part in bidding procedures floated by their Ministry/ Department, indicating that the Government reserves its right to debar the firm from taking part in any bidding procedure floated across all the Central Government Ministries/ Departments.
- c. Ministry/ Department before forwarding the proposal to DoE must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm). If DoE realizes that sufficient opportunity has not been given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
- d. DoE can also give additional opportunity, at their option, to firm to represent against proposed debarment. DoE can also take suo-moto action to debar the firms in certain circumstances.
- e. No contract of any kind whatsoever shall be placed on the debarred firm, including its allied firms by any Ministries/ Departments/ Attached/Subordinate offices of the Government of India including autonomous body, CPSUs etc. after the issue of a debarment order.
- f. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.
- g. DoE may complete the process of Debarment within 12 weeks.

(vi) Revocation of Orders

- a. An order for debarment passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific formal order of revocation.
 - b. A debarment order may be revoked before the expiry of the Order, by the competent authority, if it is of the opinion that the disability already suffered is adequate in the circumstances of the case or for any other reason.
- (vii) Other Provisions (common to both types of debarments)
- a. No contract of any kind whatsoever shall be placed to debarred firm including its allied firms after the issue of a debarment order by the Ministry/ Department. Bids from only such firms shall be considered for placement of contract, which are neither debarred on the date of opening of tender (first bid, normally called as technical bid, in case of two packet/two stage bidding) nor debarred on the date of contract. Even in the cases of risk purchase, no contract should be placed on such debarred firms.
 - b. If case, any debar firms has submitted the bid, the same will be ignored. In case such firm is lowest (L-1), next lowest firm shall be considered as L-1. Bid security submitted by such debarred firms shall be returned to them.
 - c. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
 - d. The Debarment shall be automatically extended to all its allied firms. In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the "Debarment Order".
 - e. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
 - f. The period of debarment shall start from the date of issue of debarment order.
 - g. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
 - h. Ordinarily, the period of debarment should not be less than six months.
 - i. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavour should be to pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.
 - j. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

3.4.2 Safeguarding Procuring Entity's Interests during debarment of suppliers:

Suppliers are important assets for the procuring entities and punishing delinquent suppliers should be the last resort. It takes lot of time and effort to develop, register and mature a new supplier. In case of shortage of suppliers in a particular group of materials/equipment, such punishment may also hurt the interest of Procuring Entity. Therefore, views of the concerned

Department may always be sought about the repercussions of such punitive action on the continuity of procurements. Past records of performance of the supplier may also be given due weightage. In case of shortage of suppliers and in cases of less serious misdemeanors, the endeavor should be to pragmatically analyse the circumstances, reform the supplier and get a written commitment from the supplier that his performance will improve. If this fails, efforts should be to see if a temporary debarment can serve the purpose.

Chapter 4: Need Assessment and Formulation of Specification

Procurements should be initiated only based on an indent from the user Department. The User (i.e. the Unit that has raised the requisition e.g. Technical/ Planning/ Project/ Operations/ Marketing/ Administration/ any other unit) is primarily responsible for getting sanction of the competent authority for the item and quantities to be procured. The estimated cost of procurement, specifications, technical requirements, Schedule of Requirements and the conditions specific if any is to be decided by the user. After bid opening, the evaluation is carried out by a Committee in which user is usually a member. User has a very important role from inception of the procurement requirement till the finalization of the tender and delivery of material.

Sometimes there may be a conflict between the roles of the indenting department and the procurement department, when it comes to the acquisition of goods and incidental services. The point wise explanation given below is envisioned to remove this confusion.

4.1 General Steps for Indenting Department

- (i) **Requirement Identification:** Recognize the need for goods or services required in various units or projects within the organization.
- (ii) **Estimation:** Create an estimate of the quantity and type of goods or services needed.
- (iii) **Specification Creation:** Develop detailed specifications for the goods or services, if not available, which may include size, type, quality, and other relevant features.
- (iv) **Approval of Estimate and Specifications:** Obtain approval for the estimates and specifications (if required) from the relevant authority
- (v) **Initiation of Procurement:** Provide the existing or newly approved specifications and concerned estimates to the Procurement Department to initiate the procurement process.

4.2 General Steps for Procurement Department

- (i) **Determine Procurement Method:** Decide on the most suitable procurement method—open tender, limited tender, single source, etc. and obtain the necessary approvals.
- (ii) **Preparation of Tender Document:** Develop a comprehensive tender document that includes terms and conditions, technical specifications, and qualifications required from vendors. This may also include preparation of Request for Proposal (RFP)/Quotation (RFQ) and initiating the procurement process by releasing the tender document or inviting qualified vendors to submit proposals or quotes.
- (iii) **Vendor Identification:** In the case of limited tendering or single source selection, identification of potential vendors who can supply the required goods or services based on the specifications approved by the Indenting Department.
- (iv) **Bid Evaluation:** Evaluate received proposals/quotations against pre-established criteria such as price, quality, and reliability.
- (v) **Clarifications and Amendments:** During the bid evaluation stage, address vendor queries and, if necessary, issue amendments to the tender document.
- (vi) **Approval of Vendor and Procurement Method:** Obtain approvals for the selected vendor and procurement method from higher management or a relevant committee.

- (vii) **Contract Negotiation and Award:** Negotiate and finalize the contract terms with the selected vendor.
- (viii) **Order Placement:** Officially place the order based on the finalized contract.
- (ix) **Contract Management:**
- a. Continuously monitor vendor performance against contract terms and approved specifications.
 - b. Ensure both parties adhere to the terms and conditions laid out in the contract.
 - c. Make any necessary amendments to the contract with proper documentation and approval.
 - d. Address any issues or conflicts that arise during the contract period.
 - e. Decide on contract renewals or terminations based on performance evaluations and organizational needs.
- (x) **Quality Check and Approval:** Coordinate with relevant departments to conduct quality assurance checks upon receipt of goods or services.
- (xi) **Payment and Documentation:** Process vendor payments according to contract terms and maintain all procurement-related documentation for future audits and compliance checks.

4.3 Indents are required to be generated for following requirements

4.3.1 Capital assets

After the capital works are approved by the Competent Authority, these works are allotted to the executing agency in Corporate/Regional office. The requirement for material/services based on the estimated provision in the sanctioned work is generated by the user section.

4.3.2 Operation and Maintenance

Once the work is commissioned the material required against O&M of such assets is covered under this category.

4.3.3 Last Mile Connectivity (LMC)/Business Delivery

There are cases where material/services are required immediately to capture the immediate business demand. The items needed to meet the requirement against immediate business delivery and to complete last mile connectivity are covered under this category.

4.3.4 Customer Project and Deposit Works

RailTel is in the business of executing the Customer Projects and Deposit Works of the customers like Railways OFC/Quad Cable laying and commissioning of Electronics. The material/services required to meet such requirement are covered under this category.

4.3.5 Assets Replacement

After the works are commissioned and assets serve their life, timely replacement of assets become necessary to maintain the efficiency of the network. The user should, therefore, plan in advance to ensure the timely replacement of such assets.

4.3.6 Imprest Indent

A certain quantity of Stores as standing advance is required to be kept with user to meet the day to day requirement for O&M. Normally the quantity required for 3 months is kept in stock. Some quantity to meet urgent business requirement may also be provided through Imprest procurement. The quantity can be decided based on the previous year's utilization or by forecast in respective regions.

4.3.7 Miscellaneous Demand

Procurement of misc. items like P.C / Laptop and related items, Housekeeping & Catering Services etc. are covered under this category.

4.4 Quantity Forecast

- (i) The starting point of the procurement process for any item is provision in the sanctioned estimate or forecast of its requirements which is to be reflected in the tender documents. The price of the item has a bearing on the quantity being tendered for example, higher the quantity, more the chances of price being lower.
- (ii) Excessive provisioning without taking into consideration the important aspects like available stock, outstanding dues/supplies, past consumption pattern and the average life of the equipment/ item etc. results in in-fructuous expenditure both in term of procurement cost and the inventory carrying cost. The projection and provisioning must be judicious and justified depending on various factors including usage pattern. One time purchase for project or capital equipment/ spares should be properly justified taking into account the obsolescence factor, etc.

4.5 Forecasting Methods

- (i) For all items being procured, the forecast of the equipment is obtained from the concerned user sections / branch that plan for the induction of such equipment into the network. The requirement of the equipment, usually for one year, against each project or by each Region should be worked out after discussion with the concerned Head of the Region and finalized by the User Branch. Some of the parameters based on which the forecast should be made are as follows:
 - a. Requirement of Transmission media, Power Plants, Batteries and Terminal Equipment.
 - b. Requirement under "New Programmes/ Services".
 - c. Requirement of service(s) in view of competition from other telecom service providers or other competitors.
 - d. Special up-gradation requirements, including those due to technological, licensing or regulatory requirements.
 - e. Operation & Maintenance Requirements.
 - f. Spares.
- (ii) The lead time for procurement has an important bearing in these requirements e.g. items having longer lead time need to be procured for requirement over a longer time frame whereas items having very short lead time can be procured for commensurately

shorter period of requirements.

- (iii) While forecasting the requirements, it is necessary to keep in mind the necessity of ensuring that the projects covered in the requirements are planned projects which have been approved by the competent authorities, for which funds are provided and are backed-up by estimates sanctioned by the competent authorities.
- (iv) In the cases where the supplier of the equipment or the production of equipment depends on imported components, it is necessary to have an accurate forecast so that the cost of equipment is shielded from rapid changes in the exchange rate over a longer period of time. It may be desirable to keep option of making payments in foreign currency to get better rates as then the vendor will not be hedging against currency fluctuations.
- (v) Planning/ forecast for the material requirement of periodic nature for the next financial year should normally start in September of the preceding year to ensure availability of material well in time for the next financial year.
- (vi) Where the cost of finished product depends heavily on a few items whose individual rates can be accessed independently in a reliable manner, provision of price variation clause (PVC) must be made as it leads to better rates being offered. PVC can be used in Rate Contract also for the items which require PVC to account for variation in the prices of raw material, labour etc. Example of formula for price variation clause is given in Annexure-18.
- (vii) Units of quantity are a very important parameter. Some items may be manufactured in metric tons but may be used in units of numbers or units of lengths (for example, steel sheets/structural). For the sake of transparency, it is important to buy an item in units of manufacture. For example, it is better to buy steel/structural in units of weight since it has a tolerance in weight per unit of length; this usually works to the disadvantage of the buyer if it is bought in units of length. The buying and issuing units of an item may be different but should be standardised.
- (viii) Time-schedule and place of product/work/service delivery: Need assessment and generation of indent for procurement should be done sufficiently in advance of the time when goods are required. Delays in need assessment have adverse impact on the value for money and transparency. Great care is required to be exercised in filling up realistic dates for the requirement of material. The Procuring Entity should be allowed time in accordance with the establishment lead times. In urgent cases, the Procuring Entity may entertain indents providing shorter periods but such urgencies should be approved by the authority empowered to grant administrative approval for the indent and must be accompanied by proper justification.
- (ix) **The expression/description of the need** keeping in view the Value for Money (VfM) and to ensure wide competition. Therefore to the extent practicable it should be :
 - a. Unambiguous, complete, using common terminology prevalent in relevant trade;
 - b. In accordance with the guidelines prescribed if any in this regard;
 - c. Except in case of Proprietary Purchase from a selected single source, reference to brand names, catalogue numbers or other details that limit any materials or items to specific manufacturer(s) should be avoided as far as possible. Where

unavoidable, such item descriptions should always be followed by the words “or substantially equivalent”.

4.6 Estimation of Cost

- (i) The estimated cost in the indent is a vital element in various procurement processes, approvals and establishing reasonableness of prices at the time of evaluation of the bids. Therefore, it should be worked out in a realistic and objective manner. The prevailing market price ascertained through a market survey or budgetary quotations from one or more prospective suppliers or published catalogues/Maximum Retail Price (MRP) printed on the item is the main source for establishing the estimated cost of items for which there no historic data available. It may be noted that MRPs usually include significant margins for distributors, wholesalers and retailers.
- (ii) The methods for establishing the estimated cost in the indent and tender evaluation are :
 - a. Last purchase rate/ last accepted rate: These rates are the accepted rates of RailTel or any other authority of other organization from where LPR/LAR are taken. This should be ensured that these rates are not very old. The rates may be updated with wholesale price index for that item/material. It is mentioned here that wholesale price index for different commodities are available on the website.

(Method for applying the wholesale price index: For example the LAR is of year 2017 for a particular material say OFC and indent is being prepared in the year 2020 then the percentage change in the WPI from the year 2017 to 2020 is taken and LAR is increased or decreased by this percentage to arrive estimated rate in the year 2020.)
 - b. **Analysis of rates (AOR):** This method is used when item length LPR/LAR is not available and item can be divided into small parts. The rate of each part is taken either from their LAR/LPR or from market and then the cost of each part is added to arrive at the cost of the item. In the arrived cost manufacturing cost and certain amount of contractor profit say 10% is added to arrive at the estimated cost. This estimated cost is required to be vetted by Finance and accepted by the head of the procurement wing.
 - c. **Market survey:** A committee of two members one from the Purchase department and one from the Finance department may be constituted to do the market survey. Attempt should be made to take quotations from three suppliers by the committee and lowest among the three budgetary quotes should be taken for the estimation of the cost. On cases to case basis if considered appropriate the tendered cost may be reduced by adequate percentage.
- (iii) *Purchasers are advised to go through the guidelines for preparation of Estimate for Capex and Business LMC proposals circulated by RailTel vide letter No. RCIL/CO/NTP/2022/NTP/Policy guidelines dated 28.09.2022.*

4.7 Formulation of Technical specifications

RailTel being in the field of IT/ ICT should have details in the latest specifications for the various products like switches, cables, routers, transmission equipment's and O&M equipment

etc. If the approved specifications are not available for any product/ *new technology in cases where procurement value of that item is more than Rs. 50 Lacs*, then a committee of two officers of minimum E5/E6 level should be formed *with the approval of vertical head (the one who is directly reporting to Concerned Director) in Corporate Office and Regional head in Regions*. This committee will see the latest standard and the specifications of the product and give their recommendation for the adoption of specifications which should be duly approved by *minimum E7 level*. While choosing the specifications, it should be ensured that:

- (i) The stipulated specifications have been updated, ensuring they align with and satisfy RailTel's specific needs and objectives.
- (ii) The stipulated guidelines should be generic in nature *to the extent possible* so as to allow a level playing field for the prospective bidders.
- (iii) When procuring goods, the primary reference should be the standards outlined by the Bureau of Indian Standards (BIS). Products with the BIS certification should be given priority. Similarly, standards from TEC and RDSO should also be considered where applicable. In situations where BIS, TEC, or RDSO standards aren't available, international standards can be used as a reference. However, if there's a justified reason, and it's documented, the indenting authority can choose international standards even when BIS, TEC, or RDSO standards are in place. Any deviations from these Indian standards or the addition of criteria for enhanced performance should be explicitly documented and must receive approval from the CA. If technical specifications are only slightly different from Indian standards, the latter should be the reference. Any supplementary requirements, such as packaging, marking, or inspection specific to a particular application, should be encapsulated in departmental specifications.
- (iv) **Essential Technical Particulars:** The essential technical particulars to be specified in the tender document shall include the following to the extent applicable for a particular purchase:
 - a. Scope of supply and, also, end use of the required goods;
 - b. All essential technical, qualitative, functional, environmental and performance characteristics and requirements (such as material composition, physical, dimensions and tolerances, workmanship and manufacturing process wherever applicable; test schedule; if any), including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the user may include an additional format for guaranteed technical parameters (as an attachment to the bid submission sheet), where the bidder shall provide detailed information on such technical performance characteristics in reference to the corresponding acceptable or guaranteed values;
 - c. Drawings;
 - d. Requirement of the BIS mark, where applicable, mentioning all parameters where such a specification provides options;
 - e. Requirement of an advance sample, if any, at the post contract stage before bulk production;
 - f. Special requirements of preservation, packing and marking, if any;

- g. Inspection procedure for goods ordered and criteria of conformity;
- h. Requirements of special tests or type test certificate or type approval for compliance of statutory requirements with reference to pollution, emission, noise, if any;
- i. Other additional work and/or related services required to achieve full delivery/completion, installation, commissioning, training, technical support, after-sales service and Annual Maintenance Contract (AMC) requirements, if any;
- j. Warranty requirements;
- k. Qualification criteria of the bidders, if any; and
- l. Any other aspects peculiar to the goods in question such as shelf life of the equipment, and so on.

4.8 Discourage procurement involving evaluation of samples

According to the existing guidelines on public procurement of goods, purchase in accordance with a sample should not be usually undertaken.

- (i) Calling for a sample along with the tender and deciding on the basis of evaluation of the sample may NOT be done.
- (ii) In certain specifications, there may be a built-in sample clause. Usually, such clauses are stipulated to illustrate indeterminable characteristics such as shade/tone, make-up, feel, finish and workmanship, and so on.
- (iii) If desired, a purchaser's reference sample may be displayed for prospective tenderers to illustrate the desired indeterminable characteristics, which final supplies from successful bidder(s) will have to meet in addition to the specifications/ drawings.
- (iv) If required, in addition to the purchaser's reference sample, the provision for the submission of a pre-production sample matching the purchaser's sample by successful bidder(s) may be stipulated for indeterminable characteristics, before giving clearance for bulk production of the supply.

4.9 Procurement Planning

After receipt of the Indent, the Purchase Official should take following decisions to initiate procurement, to ensure conformity to the Procurement Guidelines:

- (i) Within fixed Timeframe, on receipt of the indent from the user Department, the procuring authorities should critically review the description and TS enclosed with the indent for completeness/approvals/funding, VfM and possibility of the widest competition and seek clarifications from the indenting official, if needed, before initiating such procurement.
- (ii) **Reassessment of the quantity and appropriate aggregation of quantities of various users:** The Purchase Department shall normally neither package nor divide its procurement or take any other action so as to limit competition among bidders or to avoid the necessity of obtaining the sanction of higher authority required with reference to the estimated value of the total demand (Rule 157 of GFR 2017). Provided that in the interest of efficiency, economy, timely completion or supply, wider competition or access to MSEs, a procuring authority may, for reasons to be recorded in writing, divide its

procurement into appropriate packages, or club requirements of other users for procurement. Packaging of the contract and procurement planning should be done keeping in view the availability and possibility of eliciting the interest of the qualified firms; effective competition for the type and size of the contract; and access to MSEs.

- (iii) In a particular contract, material to be procured may constitute more than 50 (fifty) per cent of the total cost of works or there are services which are a mix of consultancy services with substantial element of goods, such as procurement of an IT system. Such procurement could be done as a single composite contract comprising all components or divided into separate contracts for each category of procurement.
- (iv) In all such situations, the dominant aspect of the requirement and value for money aspects of a composite all-inclusive contract versus dividing the contract into respective categories should be carefully examined at the time of Need assessment/Procurement Planning. This is a crucial stage of decision-making in procurement planning for a better outcome and for VfM considerations.
- (v) Determine and declare in documents, any limitation on participation of bidders as per the Government's procurement policy regarding preference to certain sections of industry, if any. The Procuring Entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or amongst bidders or against any category thereof except to lay down a reasonable and justifiable eligibility or pre-qualification criteria for the bidders.
- (vi) Selection of a system of bidding (single/two stage; single/two bids; suitability for e-Procurement or reverse auction).
- (vii) Select the mode of procurement (open tenders, limited tenders, single tenders, rate contracts, and so on).
- (viii) Decisions on the timeframe for completing various stages of procurement which should be declared in the pre-qualification/bidder registration or bidding documents. The Purchase Department should endeavor to adhere to the time limit so decided and record reasons for any modification of such limits.
- (ix) Integrated procurement plan should be prepared for goods, works and services for the ensuing financial year based on the latest cost estimates as far as possible, and realistic time schedule for procurement activities and contract implementation and thus schedule and stagger the procurements over the year with a view to ensure an even load on the Purchase Department and the market and also to co-ordinate matching procurements of Goods, Works and Services for a project.

4.10 Indenting Procedures

While mentioned under para 4.1 and 4.2 above, the indenting department and the procurement department have distinct roles, they work in tandem to achieve the purpose of procurement. Procurement wing is responsible for procurement of materials for projects, O&M and for implementing the marketing orders in RailTel. The indent which is a requisition, given to the procurement wing by the user department, must have approval of competent authority as stipulated in the Schedule of Powers (SOP).

- (i) **Detail Item description/Specifications:** The indent must indicate clear and unambiguous item description/specifications, drawings and Samples, wherever necessary.
- (ii) **Item wise Estimated Cost:** Indenter should mention the estimated cost, item wise in the indent. If last purchase rates are available than the same may be taken for preparation of estimate. In case the item is going to be procured for the first time in that case budgetary quotation shall be collected from probable sources for preparation of estimate and first time purchase should be mentioned in the indent.
- (iii) **Indication of Source of Supply:** The indenter, while submitting the indents to Stores Department, shall indicate probable name of parties who are capable to supply the required item.
- (iv) **Eligibility Criteria:** Eligibility Criteria shall be unambiguous, transparent and shall provide level playing field duly approved by competent authority with finance vetting.
- (v) **Delivery Period:** Delivery period required to meet the requirement shall be indicated in the indent.
- (vi) **Warranty Period:** Standard Warranty period shall be 36 months from the date of installation/commissioning of the material. If the indenter requirement is different then same shall be clearly specified.
- (vii) **Any other condition:** If any other specified conditions are to be given in the tender same shall be specified.
- (viii) **Nature of the item:** Nature of the item is to be specified, whether the item required is consumable in nature or asset in nature.
- (ix) **Budget Head:** Budget head to which the expenditure is to be booked shall be indicated in the indent.
- (x) For the items which are to be procured through GeM, documents as mentioned in the Procedure Order are to be submitted to the procurement wing by the user department.

Chapter 5: Modes of Procurement and Bidding Systems

5.1 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.

However, as mentioned in Para 2.2 (Applicability of this Manual) for procurements financed by Loans/Grants extended by International Agencies, like the World Bank, Asian Development Bank etc., the procurement procedures, as finalized and incorporated in the Articles of Agreements with such agencies for relevant Loans/ grants after consideration and approval of the Ministry of Finance are to be followed.

The various modes of procurement that can be used in public procurement are given below. *The purchasing officials are suggested to refer to the latest Schedule of Powers (SOP) document of RailTel to acquaint themselves with the conditions pertaining to approvals etc. for the identified procurement mode, before proceeding with the procurement process:*

- (i) Open Tender Enquiry (OTE)
- (ii) Global Tender Enquiry (GTE)
- (iii) Limited Tender Enquiry - LTE
- (iv) Special Limited Tender Enquiry (SLTE)
- (v) Single Tender
 - a) Through Proprietary Article Certificate (PAC)
 - b) Without Proprietary Article Certificate (PAC)
- (vi) Direct Procurement by Purchase Committee
- (vii) Direct Procurement without Quotation
- (viii) Online Procurement of Goods and Services through GeM Portal for Goods and Services available on GeM

5.2 Open Tender Enquiry (OTE)

- (i) In OTE, 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. OTE procedures through e-Procurement or through traditional tendering is best for the following situations:
 - a. All common use requirements with clear technical specifications;
 - b. For requirements that are ordinarily available in the open market but it is necessary to evaluate competitive offers to decide the most suitable and economical option available; and

- c. When requirements are not available from known sources or sources are presently limited and need to be broad based.

(ii) **Terms and Conditions**

- a. Bidders already registered are also free to participate;
- b. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in.
- c. RailTel using the e-procurement portal for their procurement using either e-Nivida or IREPS should publish the advertisement on those portals. The advertisement should also be published on the website of RailTel.
- d. The bidding document should also be published so as to enable the bidders to download the bidding document. To the extent possible, any cost for the tender document should not be sought from the bidders to promote wider participation and ease of bidding. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
- e. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.
- f. The tender documents should be prepared on the basis of the relevant approved SBD for the category of procurement. Further details on preparing tender documents are provided in Chapter 6.

5.3 Global Tender Enquiry (GTE)

- (i) Global Tender Enquiries (GTE) share similarities with Open Tender Enquiries (OTE). However, GTE's distinctiveness arises from its tailored advertising strategies and the provision to facilitate payments in foreign currencies through Letters of Credit, thereby targeting and encouraging participation from foreign firms, among others. The challenge with GTE, when compared with OTE, is the intricate balance between achieving Value for Money (VfM) and navigating the augmented costs and procedural complexities. Furthermore, it's paramount to consider and support the growth of the local industry when leaning towards GTE. As a result, employing GTE may be most appropriate and advantageous in specific scenarios:
 - a. Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
 - b. Non-existence of a local branch of the global principal of the manufacturer/vendors/ contractors;
 - c. Requirement for compliance to specific international standards in technical specifications; and
 - d. Absence of a sufficient number of competent domestic bidders likely to comply with the required technical specifications, and in case of suspected cartel formation among indigenous bidders.

Authority: Rule 161 of GFR 2017

(ii) **Terms and Conditions**

- a. Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at www.eprocure.gov.in.
 - b. RailTel using the e-procurement portal for their procurement using either e-Nivida or IREPS should publish the advertisement on those portals. The advertisement should also be published on the website of RailTel.
 - c. The bidding document should also be published so as to enable the bidders to download the bidding document. To the extent possible, any cost for the tender document should not be sought from the bidders to promote wider participation and ease of bidding. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded.
 - d. The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download upto the date of opening of tenders; and
 - e. GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
 - f. GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard.
 - g. In such cases e-procurement may not be mandatorily insisted upon.
 - h. The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement; and
 - i. Relevant INCOTERMS (presently 2020 version²⁸) should be included in the tender.
- (iii) **No Global Tender Enquiry (GTE) up to Rs. 200 crores²⁹** shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time. In exceptional cases where RailTel feels that there are special reasons for inviting GTE, for tenders below such limit, it may record its detailed justification and seek prior approval for relaxation from the Competent Authority specified by the Department of Expenditure. As per the amended Rule 161 of GFR, the proposal for approval shall be submitted by the Administrative Ministry with the concurrence of Financial Advisor and approval of Secretary concerned. The proposals submitted by individual offices/ organisations (e.g. autonomous bodies, CPSEs and subordinate offices of Central Government etc.) will not be entertained³⁰. Hence, RailTel being a CPSE, will be required to submit their proposal for resorting to GTE (upto Rs. 200 crore) through the

²⁸ <https://www.eepcindia.org/incoterms>

²⁹ Rule 161 of GFR, 2017 Amended vide DoE OM No. F.12/17/2019-PPD dated 15.05.2020.

³⁰ Circulated vide OM F.No.DPE/7(4)/2017-Fin by Department of Public Enterprises, Ministry of Finance dated 09.08.2021.

concerned Board Members of Ministry of Railways. The proposals shall be submitted along with duly filled format³¹ (placed at Annexure-3).

- (iv) RailTel may also send the copies of the tender document to the Indian embassies abroad as well as foreign embassies in India [Rule 161 (iv) of GFRs, 2017]
- (v) Before sending the proposals for approvals of the Global Tenders, following is to be ensured:
 - a. Domestic open tender must be floated to identify the domestic manufacturers/ service providers for the items/ services for which approval is being sought for issuance of Global Tenders. In case, RailTel has not floated a domestic open tender after 15.05.2020 for the items to be procured through GTE, such proposals will not be entertained. The proposal must contain the details of domestic open tenders, issued after 15.05.2020. These details shall cover tender number, date of opening, number of offers received, details of offers received, reasons why domestic suppliers were not considered etc.
 - b. The proposal must contain the details of deliberations with DPIIT/ relevant industrial bodies for identification of domestic manufacturers/ service providers.
 - c. The 3/5-year procurement plan as mandated by Public Procurement (Preference to Make in India) (PPP-MII) order issued by DPIIT must be published on website, before forwarding proposals for the purpose of procurement through GTE. Web-link of published procurement plan should be provided in proposal.

(vi) **Exemptions/ Clarifications/ Relaxations**

- a. On procurement of spare parts of the equipments/ Plants & Machinery etc. on nomination basis from Original Equipments Manufacturers (OEMs) or Original Equipment Suppliers (OES) or Original Part Manufacturers (OPMs) as no competitive tenders are invited in such cases³².
- b. On procurement of services like Annual Maintenance Contract (AMC) and auxiliary/ add-on components for existing equipments/ Plant & Machinery etc., which are procured from OEM/ OES/ OPM on nomination basis, as no competitive tenders are invited in such cases³³.
- c. Where RailTel need to issue GTEs to fulfil contractual commitments/ obligations entered by them before 15.05.2020 i.e. bid has been submitted by them to their clients before 15.05.2020. similarly, where RailTel need to issue GTEs in view of existing collaboration agreements entered by them with foreign suppliers before 15.05.2020³⁴.
- d. For projects funded by Multilateral Development Banks (MDBs like The World Bank, Asian Development Bank etc.)/ Bilateral Funding Agencies (BFAs), where the procurement is governed by the conditions negotiated in the loan agreement,

³¹Issued by DOE, MoF vide OM no. F.20/1/2020-PPD dtd. 08.10.2020 referring Cabinet Secretariat vide ID No. 213/2/1/2020-C.A.IV dated 06.10.2020.

³²Notified vide OM No. 12/17/2019-PPD issued by Department of Expenditure dated 29.10.2020

³³Notified vide OM No.F.4/1/2021-PPD issued by Department of Expenditure dated 01.09.2021

³⁴Notified vide OM No. 4/1/2021-PPD issued by Department of Expenditure dated 12.03.2021

and where RailTel is the project executing agency, the Secretary of the Ministry/ Department responsible for execution of such project shall be the Competent Authority for approval for issuance of GTEs by RailTel³⁵.

- e. GTE for procurement of ICT items, software and hardware such as Blade Servers, SAN Storage, LAN switches, Mobile testing devices, Cloud Orchestration and system software, Network & web APTs, mobile testing tools, Integrated Backup System (IBS) etc. can be issued with the approval of Secretary concerned, instead of Secretary (Coordination). The concerned Board Member of Ministry of Railways would be the competent authority for approval of issuance of GTE³⁶.

(vii) **Guidelines for resorting to GTE**

- a. Market assessment should be done by the concerned department of RailTel, as certified by the Competent Authority. Only after no Indian manufacturer is found, a GTE should be issued.
- b. In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.
- c. The Competent Authority (as per the RailTel's SoP)
- d. Preference to local suppliers over foreign supplier as per the existing Government of India guidelines, should be observed as applicable.

(viii) **Certification to be issued**

- a. Confirmation of non-availability in India of particular equipment/ consumables of foreign origin through GeM and other sources.
- b. Certification that locally available alternatives with equivalent specifications are not suitable

5.4 Limited Tender Enquiry (LTE)

- (i) LTE is a restricted competition procurement, where a preselected/approved list of vendors is directly approached for bidding. Bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances. This mode provides a short and simple procedure, but may not provide as good a VfM as in case of open tendering – still a good balance for procurements below a threshold.

(ii) **Terms and Conditions**

- a. Copies of the bidding document should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/ e-mail to firms which are registered vendors/contractors.
- b. Limited Tender should also be mandatorily published on CPP portal and RailTel's website.

³⁵Notified vide OM No. F.7/12/2021-PPD-I issued by Department of Expenditure dated 27.07.2021

³⁶ Notified vide No. 2020/RS(L)/779/1 issued by Railway Board, Ministry of Railways dated 17.11.2022

5.5 Special Limited Tender Enquiry (SLTE)

- (i) Whenever a preselected/approved list of vendors is not available then a special limited tender enquiry is sent to vendors who are dealing with subject procurement. There should be minimum 3 no's of the vendors in the list which should be vetted by the finance and approved by CA and then SLT enquiry should be sent. This option should be adopted in exceptional and urgent cases.
 - a. The competent authority to certify that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The purchaser should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier;
 - b. There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry;
 - c. The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote;
 - d. Nature of items to be procured is such that pre-verification of competence of firm is essential.
- (ii) There may be two cases where RailTel will need the equipments of a particular Make to meet the requirements:
 - a. **Case-1:** Where/ Whenever RailTel wins a marketing order through competitive tendering process of a purchaser organisation in which RailTel offered a solution/ equipment(s) in its bids and based on the same purchaser/ customer specifies a particular make or model of equipments to be supplied. In this type of case RailTel has to approach a particular OEM to meet the requirement.
 - b. **Case-2:** RailTel has a running network of a particular OEM and any extension of the equipments or spare are required to be procured from that particular OEM to meet the requirement.
- (iii) In both of the cases either OEM can quote directly or quote through their authorised distributors/dealers. In case OEM quotes directly then, single tender method will be adopted to finalise the procurement. Certain OEMs as per their company policy do not participate directly and they authorised their dealers/distributors to quote on their behalf. This type of requirement will be met by calling a special limited tender between the authorised dealer/distributors of the OEM. In such cases requirement of minimum 3 partner is not applicable. In both the cases SOP provisions will be followed. For cases under Case -1 Category, PAC is not required to be signed.

5.6 Single Tender

5.6.1 Single Tender through Proprietary Article Certificate (PAC)

In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/ stockists) against a PAC certificate signed by the appropriate authority. Once a PAC is signed

at the designated level as per SoP, the powers of procurement are the same as in normal conditions as per the delegation of powers.

This mode may be shortest but since it may provide lesser VfM as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations.

Certain spares have to be procure for the maintenance of the Assets and the Equipment. These Spares have to procure from the OEMs for the Compatibility and for the intended Life cycle of the Equipment. In these Circumstances the items have be procured from the OEMs only. The proforma of PAC is given in the Annexure-13.

Authority: Rule 166 of GFR 2017

(i) Terms and Conditions

- a. Users should enclose, with their Indent, a PAC certificate indicating the justification and approval at the appropriate level as per SoP, for sourcing an item from OEM or PAC firms or their authorised agents;
- b. Proprietary items shall be purchased only from a nominated manufacturer or its authorised dealer as recorded in the PAC certificate;
- c. In certain unavoidable cases, the procuring authority may have no alternative but to waive payment of EMD/SD for procurement on a proprietary basis;
- d. To the extent feasible, the firm may be asked to certify that the rates quoted by them are the same and not higher than those quoted with other Government, public sector or private organisations;
- e. In case of PAC/single tender procurements:
 1. Reports relating to such awards should be submitted to Corporate Office (CO) every quarter;
 2. Internal audit may be required to check at least 10 (ten) per cent of such cases; and
 3. Details of such contracts should be published on the website of RailTel.

5.6.2 Single Tender Enquiry (STE) without a PAC

This model may be shortest but since it may provide lesser VfM as compared to other modes of Tendering and may also strain the transparency principle, it should be restored to only under following conditions:

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

(iii) Terms and Conditions

- a. The reasons for a STE and selection of a particular firm must be recorded and approved by the CA as per the delegation of powers laid down in SoP, prior to single tendering. Unlike in PAC, powers of procurement of STE are more restricted; and
- b. Other terms and conditions of PAC procurement mentioned above would also apply in this case.

5.7 Direct Procurement by Purchase Committee

- (i) This procurement is made by a local purchase committee constituted by Competent Authority of the organization. This mode is generally adopted for procurement of materials on spot without following the formal tendering system but by calling offers through physical visit of the premises of the firm by the nominated officers. This mode of purchase is commonly known as 'Spot Purchase'³⁷.
- (ii) It is mandatory to procure Goods from GeM, hence before resorting to the Spot Purchase method, it is must to check the availability of the item to be procured on GeM and to be procured from GeM if it is available. However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary" (GeMAR&PTS)³⁸ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM.
- (iii) *However, the requirement of GeM Availability Report and Past Transaction Summary" (GeMAR&PTS) is dispensed with, whenever Spot purchase is done when material quality cannot be specified.*
- (iv) In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

Authority: Amended Rule 155 of GFR, 2017³⁹

5.8 Direct Procurement without Quotation

Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off-the-shelf goods of simple and standard specifications and when the required goods (of required specification or within required delivery period etc.) are not available on GeM⁴⁰. However, it is mandatory for a buyer to generate a "GeM Availability Report and Past Transaction Summary"

³⁷Railway Board Letter no.2002/RS (G)/779/12 dated 14-12-2011& Transformation Cell/ Rly Bd Lr.no.2017/Trans/01/policy dt.08.12.2017

³⁸Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11th June, 2021.

³⁹Amended Rule 155 of GFR 2017: [In case a certain item is not available on the GeM portal, Purchase of goods costing above [Rs.25,000 (Rupees twenty five thousand only) and upto Rs.2,50,000/- (Rupees two lakh and fifty thousand only)] on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under: "Certified that we, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question, and it is not debarred by Department of Commerce or Ministry/ Department concerned."

⁴⁰As stipulated in Department of Expenditure OM No. 6/1/2018-PPD dated 19.01.2018

(GeMAR&PTS)⁴¹ with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. The procedure is the simplest and quickest but VfM may be poor; hence it is suitable only in very low value, urgent and simple requirements in the following situations:

- (i) The requirement is urgent but was not covered in the procurement plan; and
- (ii) The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are day-to-day needs of the office and field units, and so on.

Authority: Amended Rule 154 of GFR, 2017⁴²

(iii) Terms and Conditions

- a. The competent officer of the procuring entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed (Annexure-4). Such powers to a limited extent can also be given to various user sections for operational needs.
- b. Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements. The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- c. In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.
- d. Selection of seller by diligent market enquiry is of essence of this mode of procurement.
- e. In larger cities, the presence of reputed Shopping Malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

5.9 Procurement through Government e-Marketplace (GeM)

- (i) GeM (<https://gem.gov.in>), developed by the Ministry of Commerce (MoC), GOI, functions as an e-commerce platform that brings together many sellers, offering various products and services for various government-related buyers.
- (ii) The Procurement of common Goods and Services is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017. For any exception, approval of the concerned Director is mandatory as per SOP.
- (iii) Unless otherwise specified by RailTel, instructions of the procurement on the GeM portal are to be followed by RailTel.
- (iv) RailTel has also circulated the "User Manual for Transfer of BID/RA on GeM" for the ease of purchasers and the same may be referred to while approaching for procurement through GeM⁴³.

⁴¹Notified vide OM No. F.6.18.2019-PPD issued by Department of Expenditure dated 11.06.2021.

⁴²See Rule 154 of Compilation of GFRs, 2017 upto 31.07.2023 available at https://doe.gov.in/sites/default/files/Compilation%20of%20amendments%20in%20GFRs%2C%202017%20upto%2031.07.2023_1.pdf

⁴³Letter No. RCIL-CO0PROJ(MISC)/1/2023-O/oED/POM/CO/RCIL dated 17/02/2023

- (v) The GeM portal can be utilized for direct on-line purchase as under:-
 - a. Up to {Rs.25,000/-} through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of direct procurement of Automobiles no ceiling is applicable⁴⁴);
 - b. Above Rs.25,000/- and up to Rs.5,00,000/- through the GeM Seller having lowest price amongst the available sellers (excluding Automobiles where current limit of 30 lakh will continue), of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 5,00,000.
 - c. Above Rs.5,00,000/- through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM
- (vi) The invitation for the online e-bidding/reverse auction is available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.
- (vii) The above-mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, the provisions provided in this Manual shall apply.
- (viii) A dashboard has been created by GeM for Monitoring of Cabinet Secretariat wherein information related to procurement done during current financial year and procurement potential for coming financial year is required to be filled. In this regard all the procuring departments are required to send the actual and proposed procurement periodically.
- (ix) Procurement of works is not currently available on GeM⁴⁵

5.10 Electronic Reverse Auction (RA)

Electronic Reverse Auction (ERA) is a modern procurement method that utilizes technology to drive competitive pricing in real-time. Instead of increasing their bid amounts to buy an item as in traditional auctions, in reverse auctions, suppliers decrease their bid amounts to secure a contract. Here's a detailed breakdown of its key elements and considerations. For process related to the submission of offers by the bidders under reverse auction model, please refer to para 6.13:

- (i) **Objective:** The primary goal of ERA is to achieve the most favourable price for the procuring entity by allowing suppliers to compete in real-time.
- (ii) **Platform:** This process happens online, promoting wide accessibility and transparency.

⁴⁴Notified vide OM No. F.6/17/2018-PPD dated 18.01.2022 issued by Department of Expenditure, Ministry of Finance dated 18.01.2022

⁴⁵ The copy of Chief Executive Officer, Government e-Marketplace (GeM) DO letter dated 07.12.2022 circulated by Department of Public Enterprises, Ministry of Finance vide their OM No. F.No.DPE-7(4)/2007-Fin dated 14.12.2022 on the subject of irregular procurement of Works on GeM.

- (iii) **Careful Selection:** Not all items are suitable for reverse auction. Items of strategic, critical, and vital importance, items in short supply, or those supplied by only a few suppliers shouldn't be procured through this method. Commodities, commercially-off-the-shelf items, high-value procurements, and items with many suppliers are more suitable.
- (iv) **Detailed Description:** It's essential for the procuring entity to formulate a comprehensive description of the procurement's subject matter.
- (v) **Competitive Market:** An effective ERA assumes a competitive market, meaning there should be a sufficient number of qualified bidders to ensure genuine competition.
- (vi) **Criteria Clarity:** The criteria determining the successful bid should be quantifiable and expressible in monetary terms.
- (vii) **Starting Conditions**
 - a. **Starting Price:** Set the benchmark price.
 - b. **Minimum Bid Decrement:** Define the least amount by which a new bid must undercut the current one.
 - c. **Duration of Auction:** Determine the auction's lifespan.
 - d. **Maximum Extensions:** Define the maximum number of extensions allowable.
- (viii) **Preliminary e-Procurement Stage:** An initial round might be necessary to determine eligible bidders based on specific criteria, ensuring only competent suppliers participate. If pre-qualification is deemed essential, a reverse auction may occur post a separate PQB (either electronic or otherwise), limited to the successful bidders.
- (ix) **Iterative Bidding Process:** After commencement, suppliers progressively offer lower bids, aiming to outdo each other. This real-time aspect implies the lowest bid at any instant can be superseded by a competitor's lower bid.
- (x) **Extension Mechanism:** Near the end of the ERA, if a new bid appears (e.g., in the last two minutes), the auction might extend for a set period (e.g., five minutes) to allow other bidders a chance. These extensions have a defined limit.
- (xi) **Conclusion:** Upon reaching the end, either stipulated or extended, the most favourable bid wins.
- (xii) **Transparency and Fairness:** Integrity is paramount. Ensuring no bidder holds an undue advantage and that all have the same data access is crucial. Fair proceedings make suppliers trust the process and encourage future participation.
- (xiii) ERAs can be highly beneficial by potentially leading to reduced costs. However, proper planning and administration are essential to mitigate potential challenges and to ensure the method achieves its objectives.
- (xiv) Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely:
 - a. The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and

- b. The invitation shall, in addition to the information as specified in e-procurement, include details relating to:
 1. Access to and registration for the auction;
 2. Opening and closing of the auction;
 3. Norms for conduct of the auction; and
 4. Any other information as may be relevant to the method of procurement.

Authority: Rule 167 of GFR 2017

5.11 Bidding Systems

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

5.11.1. Single Stage Bidding System

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

5.11.1.1 Single Stage Single Envelope 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 envelope system, where eligibility, technical/commercial and financial details are submitted together in the same envelope 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.

5.11.1.2 Single Stage Two Envelopes 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-envelope system may to be followed.

- (i) The tenderers should be asked to bifurcate their quotations in two envelopes. The first envelope, 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 envelope, 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;
- (ii) 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;

- (iii) 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 pre-announced 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.

Authority: Rule 163 of GFR 2017

5.11.1.3 Single Stage Multi Envelops System with pre-qualification

Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high, instead of a separate stage of Pre-Qualification bidding (as described below), a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelop in a three envelop single stage bidding, so that a bidder's risk of having his bid rejected on grounds of qualifications is remote, if due diligence is exercised by him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders.

In respect of pre-qualification bidding (PQB), in the first instance on the bid opening date only the PQB envelops (also containing the EMD and other eligibility documents) are opened and evaluated to shortlist the responsive bidders who pass the Pre-qualification. Rest of procedure is same as two envelop system for only qualified bidders. Rest two envelops of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery.

(i) Pre-qualification Bidding (PQB)

- a. In complex technical requirements where capability of source of supply is crucial (for example in procurement of complex machinery and equipments), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated since their bid price is likely to be higher commensurate with their higher capability infrastructure. Such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelop bidding – please refer para above). In PQB stage, competent qualified tenderers are shortlisted by using a Pre-qualification Criterion (PQC) like:
1. past experience of similar contracts,
 2. performance capability and
 3. financial strength
- b. Prior to the issue of the bid document exclusively to shortlisted bidders in the second stage. Pre-qualification Bids (PQB) should meet the norms of transparency, fairness and maintenance of competition. Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of goods and an eligibility criteria clause as

part of single/two envelop/cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contraindicated in the following circumstances:

1. Where procurement can be done through limited tender enquiries;
 2. Where the Procuring Entity has at least three registered bidders of the category and grade matching tendered scope of procurement and financial limit;
 3. Where the requirement is technically and commercially simple enough that pre-qualification of the bidder is not crucial for the performance of the contract, for example, Commercially Off The Shelf (COTS) requirements; and
 4. Where the procurement is moderately complex and the time, effort and money required from the bidder to participate in a tender is not very high. A clear-cut, fail-pass post-qualification criteria can be specified in a three envelop single stage bidding (instead of two stage bidding), so that a bidder's risk of having his bid rejected on grounds of qualifications is remote if due diligence is exercised him.
- c. **Pre-qualification Criteria:** PQC should be unrestrictive enough so as not to leave out even one capable vendor/contractor. Otherwise, it can lead to higher prices of procurement/works/services. However, on the other hand, these criteria should be restrictive enough so as not to allow even one incapable vendor/contractor and thus vitiate fair competition for capable vendors/contractors to the detriment of the buyer's objectives. A misjudgment in either direction may be detrimental. A sample PQC is given in Annexure-5. Due consideration should be given while framing PQC, to its effect on adequacy of competition. To encourage MSEs, past successful bidders, a call may be taken whether PQC should apply to full quantity/packages or be proportional to part quantity/package quoted by a bidder. In case requirement is suddenly a multiple times the past procurements, blind adoption of past PQCs may lead to disqualification of successful past vendors leading to inadequate competition. PQC should therefore be carefully decided for each procurement with the approval of CA for acceptance of the tender. It should be clarified in the PQB documents that bidders have to submit authenticated documents in support of eligibility criteria.
- (ii) **Advertisement and Notification:** The invitation for PQB shall be processed (advertised, bid document preparation, publicity and evaluation, and so on) in the same manner as a normal GTE or OTE (as the situation calls for) tender, ensuring the widest possible coverage. The PQC and evaluation criterion should be notified clearly in the PQB documents. The PQB documents should also indicate a complete schedule of requirements for which this PQB is being done, including approximate likely quantities of requirements. A minimum period of 45 (forty-five) days may be allowed for the submission of PQBs. In the case of urgency, duly approved by CA, the time limit may be reduced to 30 (thirty) days.
- (iii) **Evaluation:** At least in high value and critical procurements, the credentials regarding experience and past performance, submitted by the successful bidder, may be verified as per eligibility criteria, as far as reasonably feasible, from the parties for whom work has been claimed to be done. The procuring entity shall evaluate the qualifications of bidders only in accordance with the PQC specified and shall give due publicity to the particulars of the bidders that are qualified on the relevant portals/ websites.

- (iv) **Subsequent Procurement Tender:** The pre-qualification shall be valid for such period as may be specified in the pre-qualification document and for a single subsequent procurement within this period, except when it is determined that engaging in fresh pre-qualification shall not result in enhanced competition. During the period of such validity, the procuring entity shall invite bids for procurement (Request for Proposals – RfP) from pre-qualified bidders and all other bids may be treated as unsolicited offers which are normally rejected. In case bids are not invited within such a period, fresh pre-qualification shall be done. It is desirable that the time gap between the pre-qualification approval and floating of the linked main procurement tender is less than six months.

5.12 Two Stage Bidding - Expression of Interest Tenders – Market Exploration

- (i) There are instances where the equipment/plant to be procured is of complex nature and the procuring department within RailTel may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (Eoi) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner. Expression of Interest (Eoi) bids may be invited in following situations:
- a. It is not feasible for the Purchase Department to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
 - b. The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
 - c. The Purchase Department seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or
 - d. The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.
- (ii) The procedure for two stage bidding shall include the following, namely:
- a. In the first stage of the bidding process, RailTel shall invite Eoi bids containing the broad objectives, technical and financial eligibility criteria, terms and conditions of the proposed procurement etc without a bid price. On receipt of the Expressions of Interest, technical discussions/presentations may be held with the short-listed manufacturers/suppliers, which are prima facie considered technically and financially capable of supplying the material or executing the proposed work, giving equal opportunity to all such bidders to participate in the discussions. During these technical discussions stage the procurement agency may also add those other stakeholders in the discussions who could add value to the decision making on the various technical aspects and evaluation criteria. Based on the discussions/presentations so held, one or more acceptable

technical solutions could be decided upon laying down detailed technical specifications for each acceptable technical solution, quality benchmarks, warranty requirements, delivery milestones etc., in a manner that is consistent with the objectives of the transparent procurement. At the same time care should be taken to make the specifications generic in nature so as to provide equitable opportunities to the prospective bidders. Proper record of discussions/presentations and the process of decision making should be kept;

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

Authority: Rule 164 of GFR 2017.

5.12.1 Invitation of Eol Tenders for Procurement of Goods & Services

In Eol tenders, an advertisement inviting expression of interest should be published on the website of RailTel, CPPP and GeM. If Eol is being called through the e-procurement portal, then the same should be published on the respective e-procurement portal clearly stating that the proposals from prospective bidders should be submitted on the e-procurement portal. The invitation to the Eol document should contain the following information:

- (i) A copy of the advertisement;
- (ii) **Objectives and scope of the requirement:** This may include a brief description of objectives and broad scope of the requirement. It may also include the validity period of empanelment;
- (iii) **Instructions to the bidders:** This may include instructions regarding the nature of supply, fees for empanelment (if any), last date of submission, place of submission and any other related instructions;
- (iv) **Formats for submission:** This section should specify the format in which the bidders are expected to submit their Eol;
- (v) The Eol document should be made available to the interested bidder as a hard copy as well as on its website in a downloadable form; and

(vi) **Eligibility criteria:** The invitation to EoI should clearly lay down the eligibility criteria, which should be applied for short listing. Supporting documents required need to be clearly mentioned. It is advisable that the number of pages that should be part of the proposal, be mentioned. This facilitates the evaluation process of the proposals.

(vii) Given below is an example of EoI eligibility criteria

Criteria	Sub-criteria	Weightage*	Break-up of Weightage
Past experience of the firm with similar requirements		A*	
Financial strength of the vendor		B*	
	Turnover figures of the last three years		B1*
	Net profit figures of the last three years		B2*
Quality accreditations, licensing requirements		C*	
Manufacturing capabilities/tie-ups		D*	
After-sales support infrastructure		E*	
Product support		F*	

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

5.12.2 Evaluation of EoI

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

Chapter 6: Process of Tendering

6.1 Preparation of Tender Documents

- (i) The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document. Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises.
- (ii) The text of the tender 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 tender 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.
- (iii) Tender documents should be based on Standard Bidding Documents (SBDs) relevant for the value range and the category of procurement⁴⁶. To ensure uniformity, the standard provisions in most sections of the SBD are to be used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is to be done through variable sections such as Special Instructions to Bidders or special conditions of contract.
- (iv) Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- (v) Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document.

6.2 Contents of a Standard Bidding Document (SBD)

SBD for e-Procurement would be slightly different from the traditional SBD. A standard bid document must have the following details:

- (i) Notice Inviting Tender (NIT)
- (ii) Instructions to Bidders (ITB)
- (iii) Description of the work of the supply

⁴⁶Corporate Office of RailTel has issued SBD for Rate Contract vide letter: RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/ 053/VOL-1 dated 28.11.19. This bid document should be used for rate contract. However, special conditions may be added to meet special requirement of procurement.

- (iv) Appendix to Instructions to Bidders (AITB)/ Bid Data Sheet (BDS) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- (v) Eligibility and qualification criteria.
- (vi) Schedule of requirements; Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- (vii) General Conditions of Contract (GCC);
- (viii) Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- (ix) Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.
- (x) Key clauses pertaining to but not limited to:
 - a. Indemnity bond
 - b. Penalty clause
 - c. Termination clause
 - d. Force Majeure clause
 - e. Arbitration clause

Any tender document should be vetted by the Finance and approved by Tender Accepting Authority (TAA).

6.2.1 Notice Inviting Tender

The model NIT format in SBD should be used for publishing the tender notice. To ensure competition, attention of all likely tenderers, for example, registered suppliers, past suppliers and other known potential suppliers, should be invited to the NIT through the e-procurement portal being used (IREPS/ e-Nivida) and on the website of RailTel along with the publication on CPPP⁴⁷. In general, the e-procurement portal is configured in such a way that the information about an NIT is sent through email/SMSs to the vendors registered on the e-procurement portal.

In case of procurement through a limited tender, the NIT be uploaded on the e-procurement portal being used, on the website of RailTel and on CPPP with a note saying:

“This notice is being published for information only and is not an open invitation to quote in this limited tender. Participation in this tender is by invitation only and is limited to the selected RailTel’s registered suppliers. Unsolicited offers are liable to be ignored. However, suppliers who desire to participate in such tenders in future may apply for registration with RailTel as per procedure.”

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

⁴⁷Letter No. RCIL—CO0OP(MISC)/I/2019-O/o ED/Operations/CO/RCIL-Part(I) dated 01.01.2020

6.2.2 Information to Bidders (ITB) and AITB/Bid Data Sheet (BDS)

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 General Conditions of Contract (GCC), for example, the arbitration clause, resolution of disputes, and so on. Instead of modifying ITB every time, any changes warranted by special circumstances may be indicated with the prior approval of CA on a separate Appendix to ITB (AITB)/(BDS), and ITB may be included unchanged in every tender document. It should also be indicated therein that the provisions in the AITB/BDS will supersede the corresponding provisions in the ITB. Important clauses of ITB/ AITB which may require attention and action are:

6.2.2.1 Purchase Preference Policies

If the purchaser intends to give a purchase preference in line with current Government policies (for example MSE procurement policy/ Make in India etc.) this fact must be declared in the ITB/AITB and in NIT as well.

6.2.2.2 Clarification of Tender Documents

A prospective bidder requiring clarification on the tender documents may notify to RailTel in writing, well before the due date as mentioned in the tender document, and a response will be uploaded on the e-tendering portal and RailTel's website prior to the date of opening of the tender.

6.2.2.3 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 the tender documents by issuing a corrigendum. The corrigendum shall be notified in RailTel website, IREPS/ e-Nivida website and CPP Portal or any other website approved by RailTel. This information is mentioned in the tender document itself for the information of the bidders. Copies of such corrigendum should be simultaneously sent to all the selected bidders by registered /speed post/ courier/ email in case of LTE. 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.

Authority: Rule 173 (iii) of GFR 2017

6.2.2.4 Bid Validity

A bid shall remain valid for the period mentioned in the ITB/ AITB. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the

request and granting extension shall not be permitted to modify his bid. Reasons for seeking extension of bid validity should be recorded by the procuring officers at the time of taking such decisions itself.

6.2.2.5 Withdrawal, Substitution and Modification of Tenders

The tenderer, after submitting the tender, is permitted to withdraw, substitute or modify the tenders within the bid submission deadline, on the e-procurement portal, where it submitted its original bid. This does not amount to forfeiture of Bid Security/ EMD. Any such request received/ or activity carried post the bid submission deadline will not be considered and may lead to forfeiture of the bid security/ EMD.

6.2.2.6 Eligibility/Evaluation/Qualification Criteria

- (i) If it is intended to use eligibility/evaluation/qualification criteria to evaluate a tender and determine whether a tenderer has the required qualifications, this point may be clearly specified in NIT, ITB/AITB or as a separate section of the tender document. The bidder has to ensure that he provides convincing proof of having fulfilled these criteria. Any criteria not specified in the tender cannot be used for evaluation or qualification. The MSE/ or any other Government guidelines issued from time to time are applicable.
- (ii) The condition of prior turnover and prior experience may be relaxed for Startups (as defined by Department of Industrial Policy and Promotion) subject to meeting of quality & technical specifications and making suitable provisions in the bidding document (Rule 173 (i) of GFR 2017). As per Department of Expenditure's OM No.F.20/2/2014-PPD dated 20.09.2016, relaxation regarding the prior turnover and prior experience is applicable **only to all startups** recognized by Department of Industry & Internal Trade (DPIIT) subject to meeting of quality and technical specifications. Startups may be MSMEs or otherwise.
- (iii) Prequalification/ Post Qualification (PQ) shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their experience and past performance, capabilities with respect to personnel, equipment and manufacturing facilities, financial standing. The quantity, delivery and value requirement shall be kept in view, while fixing the PQ criteria. No bidder should be denied prequalification/post qualification for reasons unrelated to its capability and resources to successfully perform the contract.

(iv) Technical Eligibility Criteria

- a. The tenderer must have successfully completed any of the following during last 07 (seven) years, ending last day of month previous to the one in which tender is invited:
 1. Three similar works each costing not less than the amount equal to 30% of advertised value of the tender, or
 2. Two similar works each costing not less than the amount equal to 40% of advertised value of the tender, or
 3. One similar work each costing not less than the amount equal to 60% of advertised value of the tender.
- b. In case of tenders for composite Contracts, tenderer must have successfully completed any of the following during last 07 (seven) years, ending last day of month previous to the one in which tender is invited:

1. Three similar works each costing not less than the amount equal to 30% of advertised value of each component of tender, or
2. Two similar works each costing not less than the amount equal to 40% of advertised value of each component of tender, or
3. One similar work each costing not less than the amount equal to 60% of advertised value of each component of tender.

Note-1: Separate completed works of minimum required values for each component shall also be considered for fulfillment of technical eligibility criteria. In such cases, what constitutes a component in a composite work shall be clearly pre- defined with estimated tender cost of it, as part of the tender documents without any ambiguity. To evaluate the technical eligibility of tenderer, only components of work as stipulated in tender documents for evaluation of technical eligibility, shall be considered. The scope of work covered in other remaining components shall be executed by tenderer himself.

Note-2: Work experience certificate from private individual shall not be considered. However, in addition to work experience certificates issued by any Govt. Organization, PSU or any reputed Telecommunications company (TELCO), work experience certificate issued by Public listed company having average annual turnover of Rs 500 crore and above in last 3 financial years excluding the current financial year, listed on National Stock Exchange (NSE) or Bombay Stock Exchange (BSE), incorporated/registered at least 5 years prior to the date of opening of tender, shall also be considered provided the work experience certificate has been issued by a person authorized by the Public listed company to issue such certificates.

In case tenderer submits work experience certificate issued by public listed company, the tenderer shall also submit along with work experience certificate, the relevant copy of work order, bill of quantities, bill wise details of payment received duly certified by Chartered Accountant, TDS certificates for all payments received and copy of final/last bill paid by company in support of above work experience certificate).

(v) **Financial Eligibility Criteria**

The bidder should have minimum cumulative turnover from operation in the previous three financial years and the current financial year, at least 150% of the advertised value of the tender. The tenderers shall submit Certificates to this effect which may be an attested Certificate from the concerned department / client or Audited Balance Sheet duly certified by the Chartered Accountant/Certificate from Chartered Accountant duly supported by Audited Balance Sheet. The contact details of CA/Statutory Auditor along with UDIN No. shall be mandatorily mentioned on copy of certified Balance Sheet/Certificate.

Note: Client certificate from other than Govt. Organization should be duly supported by Form 16A/26AS generated through TRACES of Income Tax Department of India.

- (vi) Credentials if submitted in foreign currency shall be converted into Indian currency i.e., Indian Rupee as under:

The conversion rate of US Dollars into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. Where, relevant date shall be as on the last day of month previous to the one in which tender is invited. In case of any other currency, the same shall first be converted to US Dollars as on the last day of month previous to the one in which tender is invited, and the amount so derived in US

Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date

(vii) Further Explanation for Eligibility Criteria conditions

- a. In case a contract is started prior to 07 (seven) years, ending last day of month previous to the one in which tender is invited, but completed in last 07 (seven) years, ending last day of month previous to the one in which tender is invited, the completed work shall be considered for fulfillment of credentials.
- b. If a contract is physically completed and completion certificate to this extent is issued by the concerned organization but final bill is pending, such contract shall be considered for fulfillment of credentials.
- c. If a part or a component of contract is completed but the overall scope of contract is not completed (*AMC is excluded from the overall scope of the contract*), this work shall not be considered for fulfillment of technical credentials even if the cost of part completed work/component is more than required for fulfillment of credentials.
- d. In case a contract is considered similar in nature for fulfillment of technical credentials, the overall cost of that work including PVC amount if any shall be considered and no separate evaluation for each component of that work shall be made to decide eligibility.
- e. The value of final bill including PVC amount-if paid, or otherwise in case final bill is pending the contract cost in last approved variation statement plus PVC amount paid or cumulative amount paid up to last on-account bill including PVC amount and statutory deductions whichever is less, shall be considered as the completion cost of contract.
- f. In case of newly formed partnership firm, the credentials of individual partners from previous proprietary firm(s) or dissolved previous partnership firm(s) or split previous partnership firm(s), shall be considered only to the extent of their share in previous entity on the date of dissolution / split and their share in newly formed partnership firm. For example, a partner A had 30% share in previous entity and his share in present partnership firm is 20%. In the present tender under consideration, the credentials of partner A will be considered to the extent of 0.3×0.2 value of the work done in the previous entity. For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deed(s), dissolution deed(s) and proof of surrender of PAN No.(s) in case of dissolution of partnership firm(s) etc.
- g. In case of existing partnership firm, if any one or more partners quit the partnership firm, the credentials of remaining partnership firm shall be re-worked out i.e., the quitting partner(s) shall take away his credentials to the extent of his share on the date of quitting the partnership firm (e.g. in a partnership firm of partners A, B & C having share 30%, 30% & 40% respectively and credentials of Rs 10 crore; in case partner C quits the firm, the credentials of this partnership firm shall remain as Rs 6 crore). For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deed(s), dissolution deed(s)

and proof of surrender of PAN No.(s) in case of dissolution of partnership firm(s)etc.

- h. In case of existing partnership firm if any other partner(s) joins the firm, the credentials of partnership firm shall get enhanced to the extent of credentials of newly added partner(s) on the same principles as mentioned in item 6 above. For this purpose, the tenderer shall submit along with his bid all the relevant documents which include copy of previous partnership deeds, dissolution/splitting deeds and proof of surrender of PAN No.(s) in case of dissolution of partnership firm etc.
- i. Any partner in a partnership firm cannot use or claim his credentials in any other firm without leaving the partnership firm i.e., In a partnership firm of A&B partners, A or B partner cannot use credentials of partnership firm of A&B partners in any other partnership firm or propriety firm without leaving partnership firm of A&B partners.
- j. In case a partner in a partnership firm is replaced due to succession as per succession law, the proportion of credentials of the previous partner will be passed on to the successor.
- k. If the percentage share among partners of a partnership firm is changed, but the partners remain the same, the credentials of the firm before such modification in the share will continue to be considered for the firm as it is without any change in their value. Further, in case a partner of partnership firm retires without taking away any credentials from the firm, the credentials of partnership firm shall remain the same as it is without any change in their value.
- l. In a partnership firm "AB" of A&B partners, in case A also works as propriety firm "P" or partner in some other partnership firm "AX", credentials of A in propriety firm "P" or in other partnership firm "AX" earned after the date of becoming a partner of the firm AB shall not be added in partnership firm AB.
- m. In case a tenderer is LLP, the credentials of tenderer shall be worked out on above lines similar to a partnership firm.
- n. In case company A is merged with company B, then company B would get the credentials of company A also.

Authority: Railway Board Letter no: 2020/CE-I/CT/3E/GCC/Policy, dated 16.07.2020

6.2.3 Minimum Time Period for Opening of Advertised Tender

Minimum time limit for tender opening is 21 days from the date of uploading of complete tender document on e-procurement portal for downloading by the firm. The corresponding time limit for global tender will be 30 days. However, this shall be minimum time limit and wherever administration feels, because of the complexity of the item where longer minimum time may be justified, this minimum limit may be enhanced as deemed fit⁴⁸.

6.3 Joint Venture (JV) in Composite Tenders

In certain cases of Composite tenders or high value tenders the Joint venture/consortium firms are allowed to participate. In such cases, the knowledge on such type of firms is required.

⁴⁸Railway Board Letter No.2014/RS (G)/779/12 Dt: 03.12.2014.

However, this Clause shall be applicable for composite contracts wherein tender documents provide for the same. The conditions:

- (i) Separate identity/ name shall be given to the Joint Venture.
- (ii) Number of JV members in a JV shall not be more than three, if the work involves only one aspect and shall not be more than five, if the work involves more than one aspect. One of the members of the JV shall be its Lead Member who shall have a majority (at least 51%) share of interest in the JV. The other members shall have a share of not less than 20% each in case of JV with upto three members and not less than 10% each in case of JV with more than three members. In case of JV with foreign member(s), the Lead Member has to be an Indian firm/company with a minimum share of 51%.
- (iii) A member of JV shall not be permitted to participate either in individual capacity or as a member of another JV in the same tender.
- (iv) The tender form shall be purchased and submitted only in the name of the JV and not in the name of any constituent member. The tender form can however be submitted by JV or any of its constituent member or any person authorized by JV through Power of Attorney to submit tender.
- (v) Earnest Money Deposit (EMD) shall be deposited by JV or authorized person of JV through e-payment gateway or as mentioned in tender document.
- (vi) A copy of Memorandum of Understanding (MoU) duly executed by the JV members on a stamp paper, shall be submitted by the JV along with the tender. The complete details of the members of the JV, their share and responsibility in the JV etc. particularly with reference to financial, technical and other obligations shall be furnished in the MoU. (The MoU format for this purpose shall be finalized by the RailTel in consultation with the Law Branch and shall be enclosed along with the tender).
- (vii) Once the tender is submitted, the MoU shall not be modified / altered / terminated during the validity of the tender. In case the tenderer fails to observe/comply with this stipulation, the full Earnest Money Deposit (EMD) shall be liable to be forfeited.
- (viii) Approval for change of constitution of JV shall be at the sole discretion of the RailTel. The constitution of the JV shall not be allowed to be modified after submission of the tender bid by the JV, except when modification becomes inevitable due to succession laws etc., provided further that there is no change in qualification of minimum eligibility criteria by JV after change of composition. However, the Lead Member shall continue to be the Lead Member of the JV. Failure to observe this requirement would render the offer invalid.
- (ix) Similarly, after the contract is awarded, the constitution of JV shall not be allowed to be altered during the currency of contract except when modification become inevitable due to succession laws etc. and minimum eligibility criteria should not get vitiated. Failure to observe this stipulation shall be deemed to be breach of contract with all consequential penal action as per contract conditions.
- (x) On award of contract to a JV, a single Performance Guarantee shall be submitted by the JV as per tender conditions. All the Guarantees like Performance Guarantee, Bank Guarantee for Mobilization Advance, Machinery Advance etc. shall be accepted only in

the name of the JV and no splitting of guarantees amongst the members of the JV shall be permitted.

- (xi) On issue of LOA (Letter of Acceptance), the JV entity to whom the work has been awarded, with the same shareholding pattern as was declared in the MOU/JV Agreement submitted along with the tender, shall be got registered before the Registrar of the Companies under 'The Companies Act -2013' (in case of Company) or before the Registrar/Sub-Registrar under the 'The Indian Partnership Act, 1932' (in case of Partnership Firm) or under 'The LLP Act 2008' (in case of LLP). A separate PAN shall be obtained for this entity. The documents pertaining to this entity including its PAN shall be furnished to the RailTel before signing the contract agreement for the contract. In case the tenderer fails to observe/comply with this stipulation within 60 days of issue of LOA, contract is liable to be terminated. In case contract is terminated RailTel shall be entitled to forfeit the full amount of the Earnest Money Deposit and other dues payable to the Contractor under this contract. The entity so registered, in the registered documents, shall have, inter-alia, following Clauses:
- a. Joint And Several Liability - Members of the entity to which the contract is awarded, shall be jointly and severally liable to the RailTel for execution of the project in accordance with General and Special Conditions of Contract. The members of the entity shall also be liable jointly and severally for the loss, damages caused to the RailTel during the course of execution of the contract or due to non-execution of the contract or part thereof.
 - b. Duration of the Registered Entity - It shall be valid during the entire currency of the contract including the period of extension, if any and the maintenance period after the work is completed.
 - c. Governing Laws - The Registered Entity shall in all respect be governed by and interpreted in accordance with Indian Laws.
- (xii) **Authorized Member** - Joint Venture members in the JV MoU shall authorize one of the members on behalf of the Joint Venture to deal with the tender, sign the agreement or enter into contract in respect of the said tender, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said tender/contract. All notices/correspondences with respect to the contract would be sent only to this authorized member of the JV.
- (xiii) No member of the Joint Venture shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the RailTel in respect of the said tender/contract.
- (xiv) Documents to be enclosed by the JV along with the tender:
- a. In case one or more of the members of the JV is/are partnership firm(s), following documents shall be submitted:
 - 1. A notarized copy of the Partnership Deed,
 - 2. A copy of consent of all the partners or individual authorized by partnership firm, to enter into the Joint Venture Agreement on a stamp paper,

3. A notarized or registered copy of Power of Attorney in favour of the individual to sign the MOU/JV Agreement on behalf of the partnership firm and create liability against the firm.
- b. In case one or more members is/are HUF, the following documents shall be enclosed:
1. A copy of notarized affidavit on Stamp Paper declaring that he who is signing the affidavit on behalf of HUF is in the position of 'Karta' of Hindu Undivided Family (HUF) and he has the authority, power and consent given by other members to act on behalf of HUF.
- c. In case one or more members of the JV is/are companies, the following documents shall be submitted:
1. A copy of resolutions of the Directors of the Company, permitting the company to enter into a JV agreement,
 2. The copies of MOA (Memorandum of Association)/AOA (Articles of Association) of the company
 3. A copy of Certificate of Incorporation
 4. A copy of Authorization/copy of Power of Attorney issued by the Company (backed by the resolution of Board of Directors) in favour of the individual to sign the tender, sign MOU/JV Agreement on behalf of the company and create liability against the company
 5. All the Members of JV shall certify that they are not blacklisted or debarred by RailTel or Railways or any other Ministry / Department of the Govt. of India from participation in tenders/contract on the date of opening of bids either in their individual capacity or as a member of the JV in which they were/are members.
 6. All other documents in terms of explanatory notes in clause 6.3 above.

6.3.1 Credentials & Qualifying Criteria for JV

Technical, financial eligibility and Bid capacity of the JV shall be adjudged based on satisfactory fulfillment of the following criteria:

- (i) Technical Eligibility Criteria ('a' or 'b' mentioned here under):

a. **For Contracts without composite components**

The technical eligibility for the contract as per para 6.2.2.6 (iv) above, shall be satisfied by either the 'JV in its own name & style' or 'any member having min 26% share'. Each other member of JV shall have technical capacity of minimum 10% of the cost of work i.e., each JV member must have satisfactorily completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, one similar single work for a minimum of 10% of advertised value of the tender.

b. **For Contracts with composite components**

1. The technical eligibility for each component of contract as per para 6.2.2.6 above, shall be satisfied by either the 'JV in its own name & style' or 'any member of JV having min 26% share'. Each other member of JV shall have technical capacity of minimum 10% of the cost of any component of contract i.e., each JV member must have

satisfactorily completed during the last 07 (seven) years, ending last day of month previous to the one in which tender is invited, one similar single contract for a minimum of 10% of cost of any component of contract.

OR

2. The technical eligibility for major component of contract as per para 6.2.2.6 above, shall be satisfied by either the 'JV in its own name & style' or 'any member of JV having min 26% share' and technical eligibility for other components of contract as per para 5.4.1 above, shall be satisfied by either the 'JV in its own name & style' or 'any member of the JV'. Each other member of JV shall have technical capacity of minimum 10% of the cost of any component of contract. i.e., each JV member must have satisfactorily completed during the last 07(seven) years, ending last day of month previous to the one in which tender is invited, one similar single work for a minimum of 10% of cost of any component of contract.

c. **Note:** For para 6.3.1(i)

1. The Major component of the contract for this purpose shall be the component of contract having highest value. In cases where value of two or more component of contract is same, any one work can be classified as Major component of contract.

2. Value of a completed contract done by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying his/her compliance to the above-mentioned technical eligibility criteria in the tender under consideration.

(ii) **Financial Eligibility Criteria**

1. The JV shall satisfy the requirement of "Financial Eligibility" mentioned at para 6.2.2.6(v) above. The "financial capacity" of the lead partner of JV shall not be less than 51% of the financial eligibility criteria mentioned at para 6.2.2.6(v) above.

2. The arithmetic sum of individual "financial capacity" of all the members shall be taken as JV's "financial capacity" to satisfy this requirement.

Note: Contractual payment received by a Member in an earlier JV shall be reckoned only to the extent of the concerned member's share in that JV for the purpose of satisfying compliance of the above mentioned financial eligibility criteria in the tender under consideration.

6.3.2 Participation of Partnership Firms in contracts

(i) The Partnership Firms participating in the tender should be legally valid under the provisions of the Indian Partnership Act.

(ii) The partnership firm should have been in existence or should have been formed prior to submission of tender. Partnership firm should have either been registered with the Registrar or the partnership deed should have been notarized prior to date of tender opening as per the Indian Partnership Act.

(iii) Separate identity / name should be given to the partnership firm. The partnership firm should have PAN / TAN number in its own name and PAN / TAN number in the name

of any of the constituent partners shall not be considered. The valid constituents of the firm shall be called partners.

- (iv) Once the tender has been submitted, the constitution of the firm shall not normally be allowed to be modified / altered / terminated during the validity of the tender as well as the currency of the contract except when modification becomes inevitable due to succession laws etc., in which case prior permission should be taken from RailTel and in any case the minimum eligibility criteria should not get vitiated. The re-constitution of firm in such cases should be followed by a notary certified Supplementary Deed. The approval for change of constitution of the firm, in any case, shall be at the sole discretion of the RailTel and the tenderer shall have no claims what-so-ever. Any change in the constitution of Partnership firm after opening of tender shall be with the consent of all partners and with the signatures of all partners as that in the Partnership Deed. Failure to observe this requirement shall render the offer invalid and full EMD shall be forfeited.
- (v) If any Partner/s withdraws from the firm after opening of the tender and before the award of the contract, the offer shall be rejected and EMD of the tenderer will be forfeited. If any new partner joins the firm after opening of tender but prior to award of contract, his / her credentials shall not qualify for consideration towards eligibility criteria either individually or in proportion to his/ her share in the previous firm. In case the tenderer fails to inform RailTel beforehand about any such changes / modification in the constitution which is inevitable due to succession laws etc. and the contract is awarded to such firm, then it will be considered a breach of the contract conditions liable for determination of the contract under Clause 62 of General Conditions of Contract.
- (vi) A partner of the firm shall not be permitted to participate either in his individual capacity or as a partner of any other firm in the same tender.
- (vii) The tender form shall be submitted only in the name of partnership firm. The EMD shall be deposited by partnership firm through e-payment gateway or as mentioned in tender document. The EMD submitted in the name of any individual partner or in the name of authorized partner (s) shall not be considered.
- (viii) One or more of the partners of the firm or any other person (s) shall be designated as the authorized person (s) on behalf of the firm, who will be authorized by all the partners to act on behalf of the firm through a "Power of Attorney", specially authorizing him / them to submit & sign the tender, sign the agreement, receive payment, witness measurements, sign measurement books, make correspondences, compromise / settle / relinquish any claim (s) preferred by the firm, sign "No Claim Certificate", refer all or any dispute to arbitration and to take similar such action in respect of the said tender / contract. Such "Power of Attorney" shall be notarized / registered and submitted along with the tender.
- (ix) On issue of Letter of Acceptance (LOA) to the partnership firm, all the guarantees like Performance Guarantee, guarantee for various Advances to the Contractor shall be submitted only in the name of the partnership firm and no splitting of guarantees among the partners shall be acceptable.

- (x) On issue of Letter of Acceptance (LOA), contract agreement with partnership firm shall be executed in the name of the firm only and not in the name of any individual partner.
- (xi) In case the Letter of Acceptance (LOA) is issued to a partnership firm, the following undertakings shall be furnished by all the partners through a notarized affidavit, before signing of contract agreement.
- (xii) **Joint and several liabilities:**

The partners of the firm to which the Letter of Acceptance (LOA) is issued, shall be jointly and severally liable to the RailTel for execution of the contract in accordance with General and Special Conditions of the Contract. The partners shall also be liable jointly and severally for the loss, damages caused to the RailTel during the course of execution of the contract or due to non-execution of the contract or part thereof.
- (xiii) **Duration of the partnership deed and partnership firm agreement:**

The partnership deed/partnership firm agreement shall normally not be modified/altered/ terminated during the currency of contract and the maintenance period after the work is completed as contemplated in the conditions of the contract. Any change carried out by partners in the constitution of the firm without permission of RailTel, shall constitute a breach of the contract, liable for determination of the contract under Clause 62 of the General Conditions of Contract.
- (xiv) **Governing laws:** The partnership firm agreement shall in all respect be governed by and interpreted in accordance with the Indian laws.
- (xv) No partner of the firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other partner/s and that of the RailTel.
- (xvi) The tenderer shall clearly specify that the tender is submitted on behalf of a partnership firm. The following documents shall be submitted by the partnership firm, with the tender:
 - a. A notarized copy of partnership deed.
 - b. A notarized or registered copy of Power of Attorney in favor of the individual to tender for the work, sign the agreement etc. and create liability against the firm.
 - c. An undertaking by all partners of the partnership firm that they are not debarred by RailTel or Railways or any other Ministry / Department of the Govt. of India from participation in tenders / contracts as on the date of opening of bids, either in their individual capacity or in any firm in which they were / are partners. Concealment / wrong information in regard to above shall make the contract liable for determination as per the contract.
 - d. All other documents in terms of explanatory notes in para 6.3above.

6.3.3 Evaluation of eligibility of a partnership firm

Technical and financial eligibility of the firm shall be adjudged based on satisfactory fulfillment of the eligibility criteria laid down in para 6.3.1 above⁴⁹.

6.3.4 Consortium Bids

- (i) In view of nature of store/work, it is anticipated that some of the intending tenderers will pool their resources and experience to form consortia. Consortium bids are permitted with each consortia of tenderers allowed to have at maximum three members, the consortia of tenderers must clearly define the lead bidder of the consortia along with its roles and responsibilities.
- (ii) The Lead bidder should meet the eligibility criteria. In their own interest the tenderers who form such consortia are advised to investigate capabilities, availability of resources, experienced personnel, financial soundness, past experience and concurrent engagements of Constituting partners.
- (iii) Consortia of tenderers, if any, must clearly define role/scope of store/work of each partner/member. Further the legal agreement for a consortium must accompany the bid and should clearly define the leader of such a consortium who will be the contractor and will be responsible for timely completion of work as also during execution of work, if awarded, coordinate with Purchaser on behalf of the consortium, receive payments for the works executed and be liable for due performance of the contract in all respect.
- (iv) Qualification documents, details etc. must however, be provided for each member firm complete in all respects strictly in requisite proforma.
- (v) A consortium formed will not be subject to alteration with regard to change in constituting firms and/or reorientation of roles. Any changes, if proposed by consortium to take advantage of certain developments during evaluation stage will render the bid liable to be rejected. As all details are required to be furnished along with the bids and will be critically examined during evaluation of bids, it is imperative that such details should have been thoroughly examined as a safeguard against a possible disqualification of bids on these grounds.
- (vi) All partners of the consortium shall be jointly and severally liable to RailTel for the execution of the entire contract in accordance with its terms.
- (vii) In case of consortium bids by Indian Company with foreign Company as one of the consortium partners, Part of Payment (for imported items) can be quoted in any of the major foreign currencies viz USD, British Pound, EURO or Japanese YEN. In such a case, bidder should clearly specify the components of foreign exchange and Indian currency for each item.
 - a. For evaluation purposes, Exchange rate applicable on the date of technical bid opening (T.T. selling Exchange rate of State Bank of India applicable on the date of technical bid opening) will be considered.
 - b. Release of payments in foreign exchange for imported items to foreign companies as a consortium partner, shall be on request of lead bidder along with bill.

⁴⁹ Railway Board Letter no: 2020/CE-I/CT/3E/GCC/Policy, dated 16.07.2020

- (viii) Consortium shall not have more than three members and each consortium member shall have minimum 20% contribution in the work. A Consortium must submit a Power of Attorney by the other member of the Consortium in favor of the Lead Member. This is also to be enshrined in Memorandum of Agreement signed by the Consortium Members and submitted along with the bid. Members of consortium should sign every sheet of price bid as a token of acceptance of all quoted prices by members, failing which the offer will stand summarily rejected.
- (ix) An individual bidder or a member of Consortium cannot be a member of another Consortium or a JV partner and participate in this tender.
- (x) Firms should submit the affidavit (As per Annexure-6) & Consortium Agreement (As per Annexure-7) along with the bid/offer.
- (xi) Each consortium member shall make equal contribution towards the total PBG amount to be submitted along with acceptance of LOA.

6.4 Evaluation Criteria⁵⁰

- (i) The bidder shall quote the equipment prices as per the price format given in the tender.
- (ii) Bidder should quote for all the items. The Offers will be evaluated on total cost including AMC Cost as quoted including taxes.
- (iii) The offers for respective Item will be determined on Total Unit Rate on CIP destination basis which will include basic rate, GST, freight, insurance and any other charge or cost quoted by the tenderer.
- (iv) Offers from the tenderers not meeting the eligibility criteria will not be considered.
- (v) *Any optional item/modules, accessories etc. required for meeting the tender criteria shall be provided free of cost to RailTel.*

6.5 OEM/Authorized 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.

⁵⁰ Standard tender document for Rate contract/procurement circulated by RailTel vide letter no. RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053/VOL-1 dated 28.11.2019.

6.6 Schedule of Requirements

This section comprises the list of goods and delivery schedule. If there is no separate TS (Technical Specification), then TS (Technical Specification), 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.

6.7 General and Special Conditions of the Contract

- (i) The General and Special Conditions of the Contract to be used for contracting for procurement are provided in Procuring Entity's Standard Bid Document. General Conditions of Contract (GCC) covers all information on aspects after the announcement of the tender award till the closure of the contract and dispute resolution.
- (ii) It should not cover any aspect up to announcement of award. Instead of modifying the General Conditions of Contract every time, any changes warranted by special circumstances may be indicated in a separate Special Condition of Contract (SCC) with the prior approval of the Competent Authority and GCC may be included unchanged in every tender document.
- (iii) It is also to be indicated therein that the provisions in the SCC will supersede the corresponding provisions in the GCC.

6.8 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 (Annexure-8), and so on. *Any deviation in these standard forms by the bidders may be considered by the Tender Committee if the submitted tender form meets the end objective of the tender requirement.*

6.9 Mandatory e-Publishing of Tenders

In reference to para 6.2.1 above, it is mandatory for all Departments to publish their tender enquiries and corrigenda thereon on the Central Public Procurement Portal (CPPP)/Organisation Portal. These instructions apply to all Tender Enquiries, Requests for Proposals, Requests for Expressions of Interest, Notice for pre-Qualification/Registration or any other notice inviting bids or proposals in any form whether they are advertised, issued to limited number of parties or to a single party. These instructions would not apply to Purchase of goods without quotations or Purchase of goods by purchase committee.

Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decisions to exempt any case on the said grounds should be approved by the Competent Authority with the concurrence of the concerned associate finance. In the case of autonomous bodies and Statutory bodies' approval of the head of the body with the concurrence of the head of the finance should be obtained in each such case.

As per RailTel Policy NIT should be published in the following⁵¹:

- (i) IREPS and E-Nivida site as the case may be (*not required in case of procurement on GeM*).
- (ii) RailTel website
- (iii) CPP Portal

Authority: Rule 159 of GFR 2017

6.10 Receipt and Custody of Tenders

6.10.1 Cost and Availability of Tender Documents

- (i) Tender documents should be 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.
- (ii) The cost of the tender document is to be *deposited through e-tendering portal*. Firms that are eligible for exemption from the tender document fee such as MSEs, RailTel's registered units (for relevant items and monetary limit) have to submit/upload scanned copy of documents in support of this exemption.

Note-1: Normally in STE/ PAC/ LTE, no cost is charged. Tender document should mention cost of tender fee including & excluding tax both. Non submission or wrong submission of tender document fee will not lead to summarily rejection of the offer.

Note-2: The present cost of the tender document is as follows:

S.No.	Tender Value	Cost of Tender Document (excluding tax)
1	Upto Rs.25 Crore each	Rs. 0
2	Above Rs.25 crore and upto Rs.50 crore each	Rs.5,000/-
3	Above Rs.50 crore	Rs.10,000/-

6.10.2 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 techno-commercial requirements may be revised if considered necessary by way of issue of a formal corrigendum (mere minutes of the meeting of pre-bid conference would not suffice) and shared with all the bidders who purchase or have purchased the bid documents.

Authority: Rule 173 (x) of GFR 2017.

⁵¹RCIL-CO00P (MISC)/1/2019-O/o ED/Operations/CO/RCIL-Part (1) dated 01.01.2020.

6.10.3 Extension of Tender Opening Date

- (i) Sometimes, situations may arise necessitating modification of the tender documents published. 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. .
- (ii) 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.

6.11 Invitation of Tenders

- (i) Competent authority for approval of invitation of tenders shall be in accordance with the stipulations in the Schedule of Powers (SOP).
- (ii) Sale of tender documents is to be resorted to only in case of off-line tenders. The cost of tender documents to be charged from the bidders shall be in line with the company's circular issued from time to time. In case of e-tender, tender document can be downloaded from the site.
- (iii) Tender documents can also be downloaded from RailTel website/or any other website (e-Nivida) as notified in NIT. However, in all such cases, the bid must be submitted with requisite tender document cost, if specified in tender document/NIT. In all such cases of bid submission, where tender fee is required to be paid but not paid by the bidder the tendered offer shall be rejected summarily.
- (iv) In case the tender documents are uploaded on RailTel website/ or any other website (e-Nivida) as notified in NIT, then these documents can be downloaded by bidders only upto the date/time as mentioned in NIT.
- (v) Each Tender shall be given a unique Identification number.

6.12 Publication of Addendum/ Corrigendum to Tender

Any Addendum / Corrigendum shall be promptly posted on Purchaser's website / or any other website as notified in NIT and shall also be intimated by mail/fax/post to all the parties who have submitted their offers in advance.

6.13 Reverse Auction⁵²

- (i) **Technical Bid and Initial Price Offer:**
 - a. Bidder will be simultaneously required to submit a Technical & Commercial Bid and Initial Price offer.

⁵² RailTel's letter No. RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053/Vol-1 dated 22.01.2019 w.r.t the Guidelines for Electronic Reverse Auction for Works, stores and Service Contracts.

- b. Offers found eligible for bulk order shall be categorized as qualified for bulk order for the purpose of RA, offers found eligible for developmental order shall be categorized as Qualified for Development order for the purpose of RA.
 - c. Offers not complying with essential technical & commercial requirements of the tender shall be declared as ineligible for any order.
 - d. Initial Price Offer of only those bidders categorized as Qualified for Developmental Order or Qualified for Bulk Order, shall be opened and tabulated by system separately, category wise. Extent instructions for tabulation shall apply for tabulation of Initial Price Offers.
 - e. Starting point for reverse auction shall be lowest Initial Price Bid of the tenderer eligible for award of contract.
 - f. After close of the RA, tabulation of last (minimum) bids received from all the tenderers will be generated and made visible to RailTel and participating tenderers.
 - g. Bidders shall not be allowed to withdraw their last offer.
 - h. The final tabulation statement will include the initial price offer of a firm who has not participated in the RA Process.
- (ii) **Financial Bid** Financial Bid shall comprise of Final Price offer obtained through Reverse Auction.
- (iii) For all the provision the purchase official may refer letter RCIL/CO/2017/Procurement/Amendment in Tender Document/053/Vol-1 dated 22.01.2019 issued by RailTel. As per this order reverse auction should be adopted in case of store tenders more than Rs. 10 Crores.

Authority⁵³⁵⁴

⁵³Railway Board letter No.2017/Trans/01/Policy/Pt-S dated 28.03.2018

⁵⁴Railway Board letter No.RS(M)/2011/EPS/01 Pt dated 18.10.2019

Chapter 7: Bid/ Performance Security, Payment Terms and Price Variations

7.1 Forms of Security

7.1.1 Bid Security/ EMD

To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised (OTE and GTE tenders), or limited tender enquiry, Bid Security [also known as Earnest Money Deposit (EMD)] is to be obtained from the bidders along with their bids except from bidders who are exempted from paying Bid Security. The amount of bid security, rounded off to the nearest thousands of Rupees should be mentioned in the tender document. The bid security may be obtained in the form of Insurance Surety Bonds⁵⁵, account payee demand draft, fixed deposit receipt, or banker's cheque or Bank Guarantee (including e-Bank Guarantee)⁵⁶ from any of the Commercial Banks or payment online in an acceptable form, safeguarding the purchaser's interest in all respects.

In case of foreign bidders in GTE tenders it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount) issued/confirmed from any of the scheduled commercial bank in India in an acceptable form, and so on.

In place of bid security, *bid securing declaration shall be required from the bidders who are exempted from paying Bid Security* accepting that if they withdraw or modify their bids during the period of validity, or if they are awarded the contract and they fail to sign the contract, or to submit a performance security before the deadline defined in the request for bids document, they will be suspended for the period of time specified in the request for bids document from being eligible to submit bids for future tenders of RailTel. *Format of Bid Security Declaration is enclosed in Annexure-18.*

- (i) The Bid Security shall be taken from all tenderers against advertised tenders subject to the following exemptions:
 - a. Tender cases of value up to Rs. 5 (five) Lakhs.
 - b. Micro and Small Enterprises (MSEs) registered under Udyam Registration.
 - c. Startups as recognized by Department of Promotion of Industry and Internal Trade (DPIIT).

Note: In case the tenderer falls in these categories, the bidder should furnish a certified copy of its valid registration details *and Bid Security Declaration*. Except for MSEs, this exemption is valid for the trade group and monetary value of registration only.

- (ii) The amount of EMD to be taken in advertised tenders, whenever applicable, will be as tabulated below:

⁵⁵Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

⁵⁶ Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022

Estimated Value of Tender	EMD [rounded off to nearest higher Rs. 1000/-]
Above Rs. 5 lakh and Upto Rs. 20 Cr.	@2% of the estimated value of the tender subject to Max. Rs. 20 Lakh.
Above Rs. 20 Cr and Upto 100 Cr.	@1% of the estimated value of the tender subject to Max. Rs. 50 Lakh.
Above Rs. 100Cr.	@0.5% of the estimated value of the tender subject to Max. Rs. 1 Cr.

(iii) While calculating the Earnest Money, the amount should be rounded of as under

S. No.	Description	Remarks
1.	Amount of Earnest Money less than Rs.1,000/-	Should be rounded off to the next higher ten rupees.
2.	Amount of Earnest Money more than Rs.1,000/-	Should be rounded off to the next higher hundred rupees.

A bidder's Bid Security will be forfeited if the bidder withdraws or amends its tender or impairs or derogates from the tender in any respect within the period of validity of the tender or if the successful bidder fails to furnish the required Performance Security within the specified period.

- (iv) 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 *and verification by RailTel*.
- (v) In case of two packet or two stage bidding, Bid securities of unsuccessful bidders during first stage i.e. technical evaluation etc. should be returned within 30 days of declaration of result of first stage i.e. technical evaluation etc.⁵⁷

Authority⁵⁸⁵⁹: Rule 170 of GFR 2017

7.1.2 Performance Security

- (i) To ensure due performance of the contract, performance security (or Performance Bank Guarantee (PBG) or Security Deposit (SD)) is to be obtained from the successful bidder awarded the contract. Unlike contracts of Works and Plants, in case of contracts for Goods, the need for the Performance Security depends on the market conditions and commercial practice for the particular kind of goods. Performance Security should be for an amount of three (3) to ten (10) per cent of the value of the contract as specified in the bid documents⁶⁰.
- (ii) Performance security may be furnished in the form of Insurance Surety Bond⁶¹, account payee demand draft, fixed deposit receipt from a commercial bank, bank

⁵⁷Notified vide OM No. F.1/2/2022-PPD issued by Department of Expenditure dated 01.04.2022

⁵⁸Railway Board's letter No.2018/Trans Cell/Store Procurement of dated 02.01.2019.

⁵⁹Railway Board's letter No.2004/RS(G)/779/11/Pt. of dated 27.03.2019.

⁶⁰Notified vide OM No. F.1/2/2023-PPD issued by Department of Expenditure dated 03.04.2023.

⁶¹Notified vide OM No. F.1/1/2022-PPD issued by Department of Expenditure dated 02.02.2022

guarantee (including e-bank guarantee⁶²) issued/confirmed from any of the commercial bank in India, or online payment in an acceptable form, safeguarding the purchaser's interest in all respects.

- (iii) In case of GTE tenders, the performance security should be in the same currency as the contract and must conform to Uniform Rules for Demand Guarantees (URDG 758) – an international convention regulating international securities⁶³.
- (iv) Unlike, procurement of Works, in procurement of Goods, the concept of taking part of Performance Guarantee as money retained from first or progressive bills of the supplier is not acceptable
- (v) In RailTel, the amount of PBG/SD to be taken shall be 10% of the total value of contract subject to upper ceiling of Rs. 5 Crores rounded off to the nearest higher Rs. 1000 (Thousand).
- (vi) There shall be no exemption from submission of Security Deposit (SD) for any tender or by any tenderer except the store contract cases of value upto Rs. 10 (Ten) lakhs.
- (vii) Any performance security upto a value of Rs. 5 Lakhs is to be submitted through online transfer only.
- (viii) In case of submission of Security Performance in form of FDR then lien should be created in favor of “RailTel Corporation of India Ltd”.
- (ix) Performance Security is to be furnished by a specified date [generally 30 (thirty) days after notification of the award] and it should remain valid for a period of 90 (ninety) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations allowing claim period of one year (in the event of forfeiture of the bank guarantee) on top of the guarantee period.
- (x) Successful tenderer is required to furnish security deposit in the form of identified in para 7.1.2 (ii) above and the same should be submitted within 30 days of issue of LOA/PO failing which a penal interest of 15% per annum shall be charged for the delay period i.e. beyond 30 (thirty) days from the date of issue of LOA/PO. The performance security should cover warranty period as per the tender conditions.
- (xi) The Performance Security will be forfeited and credited to the RailTel Corporation of India Limited (RCIL) account in the event of a breach of contract by the contractor. It should be refunded to the contractor without interest, after he/she duly performs and completes the contract in all respects but not later than 90(ninety) days of completion of all such obligations including the warranty under the contract *and receiving of PBG against the AMC contract (if AMC is part of the contract). The contractor will be required to confirm and submit that the AMC has been bought from the OEM for entire AMC period (where the contractor is the authorized partner of the OEM).* Return of Bid/Performance Securities should be monitored and delays should be avoided. If

⁶²Notified vide OM No. F.1/4/2022-PPD issued by Department of Expenditure dated 05.08.2022

⁶³ A set of rules developed by the International Chamber of Commerce first adopted in 1992. The latest version URDG 758 provides a framework for harmonising international trading practices and establishes agreed-upon rules for independent guarantees and counter-guarantees among trading partners for securing payment and performance in worldwide commercial contracts.

feasible, the details of these securities may be listed in the e-Procurement portal, to make the process transparent and visible.

- (xii) On the request of the winning bidder, a Rolling Performance Bank Guarantee (R-PBG), may be allowed. R-PBG shall be furnished within 30 (thirty) days of issue of LOA/PO and it should be valid for a period of 3 (three) years initially and shall be renewed on annual basis. R-PBG shall remain valid for a period of 90 (ninety) days beyond the date of completion of all contractual obligations of the Bidder including warranty and AMC obligations.
- (xiii) In the case of service contracts spanning over multiple number of the years, care needs to be taken to decide on the amount of performance security being sought along with the duration. It has been observed that procuring entities retain the performance security over the complete service contract period which may be of 5-7 years or may be more. This practice puts the service provider in a difficult situation as they have to block a substantial amount of their working capital as security for the entire duration of the contract. In such cases the following is suggested⁶⁴:
- a. The right quantum of performance security has to strike a balance between protecting the procuring entity's interest in case of default in performance vs. avoiding increase in tendered price and /or reduced competition. If the security is low, the entity may be adversely affected if and when default occurs. If it is high, the extra financial cost of furnishing such security will be factored in by bidders when quoting prices & hence the cost may increase.
 - b. Therefore, sufficient flexibility is already available in the GFRs to design the performance security for procurement of services, both value and duration, duly considering the market conditions and commercial practice for the particular kind of service.
 - c. Further to above, procuring entities may consider to proportionately keep reducing performance security in proportion to the balance service period, wherever feasible.
 - d. Wherever, it is decided to take lower or proportionally reducing PS, tender conditions may be suitably modified for the future cases.

Authority⁶⁵⁶⁶⁶⁷⁶⁸

Rule 171 of GFR 2017

7.1.3 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 90 (ninety)

⁶⁴ Notified vide No.F.1/6/2023-PPD issued by Department of Expenditure dated 24.05.2023

⁶⁵ Railway Board's letter No.2004/RS (G)/779/11 dated 21.02.2018.

⁶⁶ Railway Board's letter No.2004/RS(G)/779/11/Pt. of dated 27.03.2019.

⁶⁷ RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053 / Vol-1 dated 30.10.2017

⁶⁸ RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053/VOI-1 dated 28.11.2019.

days beyond delivery/ commissioning period and the contractor may be allowed to submit a fresh Warranty Bank Guarantee of 10 (Ten) percent of the value of the goods in the currency of the contract valid upto 90 (ninety) 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.

7.1.4 Verification of Bank Guarantees

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

- (i) BG shall be as per the prescribed formats.
- (ii) A separate advice of the BG will invariably be sent by the BG issuing bank to the RailTel's Bank through SFMS (Structured Financial Messaging System) and only after this the BG will become acceptable to RailTel. RailTel's Bank IFSC code, its branch and address shall be provided by RailTel to the contractor and contractor shall advise these particulars to the BG Issuing bank and request them to send advice of BG through SFMS to the RailTel's Bank.⁶⁹

7.1.5 Safe Custody and Monitoring of EMDs, Performance Securities and Other Instruments

Performance securities shall be submitted to finance in ERP along with original bank guarantee. The Organisation shall take 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.

7.2 Payment Clause

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

In case of indigenous goods, the main elements of price may include raw material, production cost, overhead, packing and forwarding charges, margin of profit, transit insurance, GST/ Statutory levies as applicable. In case of imported goods, in addition to similar elements of price as above (other than GST etc.), there may be elements of basic custom duty, landing

⁶⁹RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053/VOI-1 dated 28.11.2019.

and clearing charges and commission to Indian agents. Further, depending on the nature of the goods (whether domestic or imported), there may be cost elements towards installation and commissioning, operator's training, and so on.

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

- (i) **Elements of Price:** Where the price has several components such as the price of the goods, cost of installation and commissioning, operators' training, and so on, bidders should be asked to furnish a cost break-up indicating the applicable prices and taxes for each of such components along with the overall price. The payment schedule and terms will be linked to this cost break-up.
- (ii) **Currency:** The tender documents are to specify the currency (currencies) in which the tenders are to be priced. As a general rule, domestic tenderers are to quote and accept their payment in Indian currency; Indian agents of foreign suppliers are to receive their agency commission in Indian currency; costs of imported goods, which are directly imported against the contract, may be quoted in foreign currency (currencies) and paid accordingly in that currency; and the portion of the allied work and services, which are to be undertaken in India (like installation and commissioning of equipment) are to be quoted and paid in Indian currency.
- (iii) **Payment to Suppliers:** In a supply contract, delivery of goods is the essence of the contract for the purchaser. Similarly, receiving timely payment for the supplies is the essence of the contract for the seller. A healthy buyer-supplier relationship is based on the twin foundation of timely and quality supply, on the one hand, and prompt and full payment to the supplier, on the other. It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions:
 - a. As far as possible, the payment terms and time schedule should be given in the contract and must be adhered to. Any foreseeable payment delays should be communicated to the suppliers in advance.
 - b. Prompt and timely provision of statutory certificates to the seller for taxes deducted at source, are as much a part of payment as the amount actually released. A detailed payment advice showing the calculations and reasons for the amounts disallowed and taxes deducted must be issued to the supplier along with payment. As soon as possible, but not later than the date of submission of Tax returns, the Procuring Entity must provide the statutory certificates for the taxes deducted to the Supplier, so that he is able to claim set-offs and refunds from the concerned authorities.
 - c. Release of payment and settlement of the final bill should be processed through the Associated Finance as per the terms and conditions of the contract.
 - d. No payments to contractors by way of compensation or otherwise outside the strict terms of the contract or in excess of the contract rates should be allowed.

- (iv) Before the payment is made, the invoice should be cross-checked with the actual receipt of material/assets/services to ensure for the creation of the GRN on ERP so that the payment matches the actual performance.
- (v) While claiming the payment, the contractor must certify on the bill that the payment being claimed is strictly within terms of the contract and all the obligations on his part for claiming this payment have been fulfilled as required under the contract. There should also be a suitable provision for verification of the authenticity of the person signing the invoice, and so on, to claim the payment.

7.3 Terms of Payment for Domestic Goods

- (i) Where the terms of delivery are FOR dispatching station, the payment terms, depending on the value and nature of the goods, mode of transportation, and so on, may be 60 to 90 (sixty to ninety) per cent on proof of dispatch and other related documents and balance on receipt at site and acceptance by the consignee.
- (ii) Where the terms of delivery is FOR destination/delivery at site, the usual payment term is 100 (hundred) per cent on receipt and acceptance of goods by the consignee and on production of all required documents by the supplier.
- (iii) Where goods to be supplied also need installation and commissioning by the supplier, the payment terms are:
 - a. In case of supply only: 100% of the value of the part supply of the equipment on receipt by the consignee at site duly inspected and accompanied with valid documents.
 - b. In case of supply and installation:
 - 1. 80% of the value of the part supply of equipment on receipt by the consignee at site duly inspected and accompanied with valid documents.
 - 2. Balance 20% of the value of the part supply on successful installation and commissioning at site. Bidder has to install and commission the equipment within 30 days from the communication by RailTel EIC (Engineer In-Charge). In case installation and commissioning is delayed on account of RailTel then 20% payment can be released after submission of a Bank Guarantee of equal amount valid for a period of one year.

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

Authority: RailTel approved Rate Contract tender document.

7.3.1 Modes of Payment for Domestic Goods

Payments to domestic suppliers are made through transparent electronic payment systems like Electronic Clearance System (ECS), Real-Time Gross Settlement Systems (RTGS), National Electronic Funds Transfer (NEFT) or Electronic Payment Gateways. 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.

7.3.2 Documents for Payment for Domestic Goods

- (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/Transporters 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.

7.3.3 Modes of Payment for Imported Goods

It should be ensured that the imports into India are in conformity with the export-import policy in force: FEMA; FEMA (Current Account Transactions) Rules, 2000⁷⁰ framed by Procuring Entity; and directions issued by RBI under FEMA from time to time.

For imported goods, payment usually happens through the LC opened by the State Bank of India, or any other scheduled/authorised bank as decided by the procuring entity. The amount of LC should be equal to the total payable amount and be released as per the clauses mentioned above. If the LC is not opened, payment can also be made to the seller through a direct bank transfer for which the buyer has to ensure that payment is released only after the receipt of prescribed documents.

7.3.4 Documents for Payment for Imported Goods

The documents, which are needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority is also to verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment. Documents, which the supplier is to furnish while claiming payment, are specified in the Letter of Credit, but usually are:

- (i) Supplier's original invoice giving full details of the goods including quantity, value, and so on;
- (ii) Packing list;
- (iii) Certificate of country of origin of the goods to be given by the seller or a recognised chamber of commerce or another agency designated by the local Government for this purpose;
- (iv) Certificate of pre-dispatch inspection by the purchaser's representative;
- (v) Manufacturer's test certificate and guarantee;
- (vi) Certificate of insurance;

⁷⁰<https://incometaxindia.gov.in/Documents/Provisions%20for%20NR/provision-for-non-resident-fema-current-account-transactions-rules-2000.htm>

- (vii) Bill of lading/airway bill/rail receipt or any other dispatch document, issued by a Government agency (like the Department of Posts) or an agency duly authorised by the concerned Ministry/Department, indicating:
 - a. Name of the vessel/carrier;
 - b. Bill of lading/airway bill;
 - c. Port of loading;
 - d. Date of shipment;
 - e. Port of discharge and expected date of arrival of goods; and
 - f. Any other document(s) as and if required in terms of the contract.

7.3.5 Letter of Credit

- (i) Two banks are involved in payment to the supplier by LC: the purchaser's bank and supplier's bank.
- (ii) The purchaser is to forward the request to its bank in the prescribed format as formulated by the Bank, along with all relevant details including an authenticated copy of the contract.
- (iii) Based on this, the purchaser's bank opens the LC on behalf of the purchaser for transacting payment to the supplier through the supplier's bank.
- (iv) Care should be taken to ensure that the payment terms and documents to be produced for receiving payments through LC are identical with those shown in the contract.
- (v) Generally, the irrevocable LC is opened so that the supplier is fully assured of his payment on fulfilling his obligations in terms of the contract.
- (vi) In case the delivery date of the contract is extended to take care of delay in supply, for which the supplier is responsible, the tenure of the LC is also to be extended, but the expense incurred for such an extension (of LC) is to be borne by the supplier.
- (vii) Provisions of Uniform Customs and Practices for Documentary Credits (UCP 600)⁷¹ should be adhered to while opening the LC for import into India.

7.4 Advance Payment

- (i) Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:
 - a. Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
 - b. Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;
- (ii) Suggested advance payment conditions are shown below. These can be adjusted/modified as per deemed suitable by RailTel:

⁷¹The Uniform Customs and Practice for Documentary Credits (UCPDC or simply UCP) is a set of rules regarding techniques and methods for handling LCs in international trade finance which has been standardised by the International Chamber of Commerce – the current version being the UCP600.

- a. Thirty per cent of the contract value to private firms;
 - b. Forty per cent of the contract value to a state or central Government agency or PSU; or
 - c. In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
- (iii) While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. The Bank Guarantee for such advance shall clearly cover at least 110% of the value of the sanctioned advance amount (covering principal plus interest)⁷²
- (iv) Further, such advance shall carry an interest. The rate of interest as decided by Railway shall be adopted as and when informed by Railway. The current rate of interest is RBI Bank rate + 5% (five percent) simple interest⁷³.

7.4.1 Documents for Advance Payments

Documents, needed from the supplier for release of payment, are to be clearly specified in the contract. The paying authority should also verify the documents received from the supplier with corresponding stipulations made in the contract before releasing the payment.

7.4.2 Insurance

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

Authority: Rule 172 of GFR 2017.

7.5 Firm Price vis-à-vis Variable Price

- (i) Short-term contracts where the delivery period does not extend beyond 18 (eighteen) months should normally be concluded with a firm and price fixed by inviting tenders accordingly. However, even for shorter deliveries, the Price Variation Clause (PVC) may be stipulated for items with non-ferrous and other raw materials prone to short-term price volatility - especially for critical or high value items – otherwise there is a possibility of the contract failing or the purchaser having to pay a higher price if prices fall. For high value (more than Rupees Three Crores) tenders with deliveries longer than 18 (eighteen) months, PVC may be provided to protect the purchaser's interests also.

⁷²Letter No. 2022/CR-I/CT/GCC-2022/Policy dated 27.04.2022 issued by Railways.

⁷³Letter No.2018/CE-UCT/1 dated 12.05.2023 issued by Railway.

- (ii) Where it is decided to conclude the contract with a variable price, an appropriate clause incorporating, inter-alia, a suitable price variation formula should also be provided in the tender documents, to calculate the price variation between the base level and scheduled delivery date.
- (iii) It is best to proactively provide our own PVC in the tender document to discourage different bidders quoting different formulae and different base dates, which may lead to problems on bringing their prices on a common comparable footing.
- (iv) The variations are to be calculated periodically by using indices published by Governments/ chambers of commerce/London Metal Exchange/any other neutral and fair source of indices. Suitable weights are to be assigned to the applicable elements, that is, fixed overheads and profits, material and labour in the price variation formula. If the production of goods needs more than one raw material, the input cost of material may be further sub-divided for different categories of material, for which cost indices are published.
- (v) The following are important elements of PVC:
 - a. The price agreed upon should specify the base date, that is, the month and year to which the price is linked to enable variations being calculated with reference to the price indices prevailing in that month and year. The raw materials used in manufacture are procured some weeks before the goods' submission for inspection. This period is called the Time Lag for price variation. It applies both for base date and date of supply. This time lag at both ends must be specified;
 - b. The price variation formula must also stipulate a minimum percentage of variation of the contract price, only above which the price variation will be admissible (for example, where the resultant increase is lower than, say, two per cent of the contract price, no price adjustment will be made in favour of the supplier);
 - c. The price variation clause should provide for a ceiling on price variations, particularly where escalations are involved. It could be a percentage per annum or an overall ceiling or both;
 - d. Where advance or stage payments are made there should be a further stipulation that no price variations will be admissible on such portions of the price, after the dates of such payment;
 - e. Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract. The LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC;
 - f. No upward price variation will be admissible beyond the original scheduled delivery date for defaults on the part of the supplier. However, a downward price variation would be availed by the purchaser as per the denial clause in the letter of extension of the delivery period;
 - g. Price variation may be allowed beyond the original scheduled delivery date, by specific alteration of that date through an amendment to the contract in cases of force majeure or defaults by Government;

- h. Where contracts are for supply of equipment, goods, and so on, imported (subject to customs duty and foreign exchange fluctuations) and/or locally manufactured (subject to excise duty and other duties and taxes), the percentage and element of duties and taxes included in the price should be specifically stated, along with the selling rate of foreign exchange element taken into account in the calculation of the price of the imported item;
- i. The clause should also contain the mode and terms of payment of the price variation admissible; and
- j. The buyer should ensure a provision in the contract for the benefit of any reduction in the price in terms of the PVC being passed on to him;
- k. An illustrative PVC clause is available in Annexure 19.
- l. Care should be exercised in contracts providing for Price Variation to finalise the price before final payment is made, after obtaining data and documents in support of claims for escalation, if any. Where no such claims are submitted by the suppliers, an examination of whether there has been a downward trend in the cost, which the contractor may not bring out, is required. At any rate, an undertaking should be obtained from the contractor to the following effect in case it becomes necessary to make the final payment before he has submitted the required data/documents related to the PVC:

“It is certified that there has been no decrease in the price of price variation indices and, in the event of any decrease of such indices during the currency of this contract, we shall promptly notify this to the purchaser and offer the requisite reduction in the contract rate.”
- m. Notwithstanding the above formalities, it should be appreciated that it is in the interest of the purchaser to be vigilant about downward variation and it is, therefore, the basic responsibility of the purchase officers to make sure that the benefits of downward variation, wherever it occurs, are fully availed of.

7.5.1 Raw Material Price Escalation Clause

RailTel, in general, prefer firm price contracts. However, there may be cases of procurement of stores which are raw- material (Steel/ Non-Ferrous) intensive wherein the tenderers may quote with Price Variation clause. Such Price Variation Clause must be unambiguous and having clear price variation formulae. Ambiguous conditions like “Price Variation Clause applicable” will not be acceptable and such offers shall be summarily rejected. Following Price Variation Clauses are generally recognized by the Organization.

For the procurement of Signaling cables, Quad cables etc. The relevant Indian Electrical and Electronics Manufacturers association (IEEMA) formula issued from time to time are applicable. For any price updation, the base price and other indices shall be taken from current and relevant IEEMA circulars.

Note: Tenderers whose offers are with IEEMA PVC, should quote with the prices of input raw materials ruling on the base date as stipulated in the relevant PVC (IEEMA). For example, in case of IEEMA PVC, if the tender opening date falls in May of a year, the applicable prices of input raw materials should be those prevailing on the 1st April of that year.

7.6 Exchange Rate Variation

- (i) In case of a contract involving substantial import content(s) and having a long delivery period (exceeding one year from the date of contract), an appropriate Foreign Exchange Variation clause may be formulated in consultation with the Finance, as needed, and incorporated in the tender enquiry document. The conversion rate of foreign currency(s) [permitted in the tender document] shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. *The relevant date shall be as on the last day of month previous to the one in which tender is invited.* The tenderers are to be asked to indicate import content(s) and the currency(ies) used for calculating the value of import content(s) in their total quoted price, which (that is, the total quoted price) will be in Indian Rupees.
- (ii) To work out the variation due to changes (if any) in the exchange rate(s), the base date for this purpose will be *the last day of month previous to the one in which tender is invited.* The variation may be allowed between the above base date and date of remittance to the foreign principal/mid-point of manufacture of the foreign component (date as deemed suitable by RailTel). The applicable exchange rates as above will be according to the TT selling rates of exchange as quoted by authorised exchange bankers approved by RBI on the dates in question. No variation in price in this regard will be allowed if the variation in the rate of exchange remains within the limit of plus/minus _____per cent [say plus/ minus band of 2.5% (Two-point Five percent)].
- (iii) Any increase or decrease in the customs duty by reason of the variation in the rate of exchange in terms of the contract will be to the buyer's account. In case the delivery period is revised/extended, ERV will not be admissible, if this is due to the supplier's default; however, ERV benefits arising out of downward trends should be passed on to RailTel. RailTel may formulate an appropriate ERV clause on similar lines as above in consultation with their Finance Wing.

7.6.1 Documents for Claiming ERV

- (i) A bill of ERV claim enclosing the working sheet;
- (ii) Banker's certificate/debit advice detailing the foreign exchange paid and exchange rate;
- (iii) Copies of the import order placed on the supplier; and
- (iv) Supplier's invoice for the relevant import order.

7.7 Taxes, Duties and Levies

7.7.1 Statutory Duties and Taxes on Domestic Goods

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

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

7.8 Key Conditions Applicable only for Items Which are Covered by GST

7.8.1 Taxes and Duties

Tenderers should clearly indicate separately ex-works basic price, packing charges, forwarding charges, GST applicable with HSN code and Freight charges upto destination, in the respective field of the Financial Offer form for each unit tendered. Therefore, if the tenderer happens to quote a composite rate, due break-up is to be given showing freight and forwarding charges separately in the field of the Financial Offer Form.

Tenderers are required to quote in the same rate unit (i.e. Number, set etc.) as given in the tender schedule. Any deviation in this aspect will make the offer liable to be ignored.

7.8.2 DENIAL CLAUSE

Supplier will not be entitled to any benefit of upward statutory variations in GST rates announced after expiry of the original Delivery Period as per purchase order & in case of reduction in GST rates if any, benefit will be passed on to RailTel at any stage of the contract.

7.8.3 Goods and Services Tax

- (i) Tenderers will examine the various provisions of the Central Goods and Services Tax Act, 2017(CGST)/Integrated Goods and Services Tax Act, 2017(IGST)/ Union Territory Goods and Services Tax Act, 2017 (UTGST)/respective state's State Goods and Services Tax Act (SGST) also, as notified by Central/State Govt. & as amended from Time to time and applicable taxes before bidding. Tenderers will ensure that full benefit Of Input Tax Credit (ITC) likely to be availed by them is duly considered while quoting Rates.
- (ii) The successful tenderer who is liable to be registered under CGST/IGST/UTGST/SGST Act shall submit GSTIN along with other details required Under CGST/IGST/UTGST/SGST Act to RailTel at the time of submission of offer/ After conclusion contract, without which no payment shall be released to the tenderer.
- (iii) In case the successful tenderer is not liable to be registered under CGST/IGST/UTGST/SGST Act, the RailTel shall deduct the applicable GST from his/their bills under reverse charge mechanism (RCM) and deposit the same to the concerned Authority.
- (iv) Tenderers to refrain from quoting vague terms like "GST as applicable" They will have to clearly quote the current percentage rate of GST extra as applicable along with the related HSN No.
- (v) The offers will be evaluated based on the GST rate quoted by bidders. While quoting it is the responsibility of the bidders to ensure that they are quoting correct GST rate and HSN No. If they quote erroneous GST rate and HSN No. then the liability for payment of the difference in GST amount if any, at a later date will lie with the bidders only and no increase in rate of GST rate will be allowed subsequently unless or until the same is changed by statute after the opening of tender and within the original delivery period.

7.8.4 Payment of GST

- (i) The rate of GST at present legally leviable in this case is____% as assessed by the concerned authority. The claim for GST on each bill should be supported by following certificate(s):
 - a. Certified that the GST charged on this bill is not more than that is legally leviable and payable under the provision of the relevant act or rules made there under.
 - b. Certified that the amount of Rs. claimed as GST in this bill is in accordance with the provision of the rules in all respects and the same has been actually paid to the authorities concerned in respect of the stores covered by the bills.
- (ii) GST will be paid on production of documentary proof. All input credits should be passed on to RailTel by the supplier. To this effect, the firm should give declaration that all input credits has been passed on to RailTel while submitting the bills. We further agree to pass on such additional duties and set off as may become available in future in respect of all the inputs used for the manufacture of the final product, on the Date of the supply by way of reduction in price and advise the purchaser accordingly.
- (iii) All the offers shall be evaluated as per tax regime as applicable on the date of tender opening.

7.9 Incoterms Terms of Delivery

Incoterms rules mainly describe the tasks, costs and risks involved in the delivery of goods from the seller to the buyer. The risk to goods (damage, loss, shortage, and so on) is the responsibility of the person who holds the ‘title of goods’ at that point of time. This may be different from actual physical possession of such goods. Normally, unless otherwise defined, the title of goods passes from the supplier to the purchaser in accordance with the terms of delivery (FOR, CFR, among others). The terms of delivery, therefore, specify when the ownership and title of goods pass from the seller to buyer, along with the associated risks. Incoterms as described by the International Chamber of Commerce are an internationally accepted interpretation of the terms of delivery. The latest version of the Incoterms were issued in 2020⁷⁴. These terms of delivery allocate responsibilities to the buyer and seller, with respect to:

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

Table: Incoterms and their applications

INCOTERMS Options	Applicable to
Any mode of transport	
EXW – Ex-Works	The seller makes the goods available at their premises, or at another named place

⁷⁴<https://iccwbo.org/business-solutions/incoterms-rules/incoterms-2020/>

FCA – Free Carrier	The seller delivers the goods, cleared for export, at a named place to a carrier or to another party nominated by the buyer
CPT – Carriage Paid To (named place of delivery) (earlier C&F – cost and freight)	The seller is responsible for export clearance and freight costs for carriage to the named place of destination
CIP – Carriage and Insurance Paid to (named place of delivery)	In addition to CPT responsibilities, seller is required to obtain insurance for the goods while in transit for 110% of the contract value under Institute Cargo Clauses (A) of the Institute of London Underwriters.
DAP – Delivered At Place (named place of delivery)	seller delivers the goods, ready for unloading, at the named place of destination
DPU – Delivered at Place Unloaded (named place of delivery) (Earlier DAT - Delivered At Terminal)	In addition to DAP responsibilities, seller is required to unload the goods at the named place of destination.
DDP – Delivered Duty Paid (named place of delivery)	In addition to DAP responsibilities, seller is required to clear the goods through customs and pay import duties and taxes.
Sea and Inland Waterway transport	
FAS – Free Alongside Ship	alongside the buyer's vessel at the named port of shipment, the seller to clear the goods for export. However, if the parties wish the buyer to clear the goods for export, add explicit wording in the contract.
FOB – Free On Board	seller to arrange for export clearance and deliver goods on board a vessel that is to be designated by the buyer.
CFR – Cost and Freight	In addition to FOB, responsibilities, The seller pays for the carriage of the goods up to the named port of destination
CIF – Cost, Insurance and Freight	In addition to CFR responsibilities, seller is required to obtain insurance for the goods while in transit for 110% of the contract value under Institute Cargo Clauses (A) of the Institute of London Underwriters.

In use since 1936, Incoterms have been revised in 2020. Out of the 11 Incoterms options, seven apply to all modes of transportation whereas four apply only to sea and inland waterway transportation.

The options range from one extreme – the buyer takes full responsibility from point of departure – to the other extreme: the seller is responsible all the way through delivery to the buyer's location.

There are certain terms that have special meaning within Incoterms as defined below:

- a. Delivery: The point in the transaction where the risk of loss or damage to the goods is transferred from the seller to the buyer
- b. Free: Seller has an obligation to deliver the goods to a named place for transfer to a carrier
- c. Carrier: Any person who, in a contract of carriage, nominated by seller/ buyer for transport by any mode.

d. To clear for export: To file Shipper's Export Declaration and get export permit

Within national transportation, certain terms have assumed acceptance due to usage. FOR has two versions: FOR/dispatching and FOR/destination (the buyer is responsible from the nominated point mentioned till arrival point, as in Delivery at Terminal). Infrequently, it is also used in road transport as FOT.

7.10 Deduction of Income Tax, Service Tax, and so on, at Source from Payments to Suppliers

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

Chapter 8: Evaluation of Bids and Award of Contract

8.1 Tender Evaluation

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 should be overlooked/ relaxed while evaluating the tenders. The aim should be ensured that no tenderer gets undue advantage at the cost of other tenderers and/or at the cost of Purchase Department.

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.

TC should normally comprise of three members including Financial Adviser or his representative and a representative of the user as per SoP of RailTel in order to carry out evaluation of the tenders. TC should not be very large as it may slow down the evaluation process. However, suitable domain/technical experts may be included in the committee to render assistance in evaluation of the bids. *In general, there is no need to constitute any other committee for technical evaluation, preliminary evaluation, etc. However as per the need other committee with the approval of Competent Authority may be formed.* It is desirable that no member of the tender committee should be reporting directly to any other member of such committee.

8.2 Preparation and Vetting of Comparative Statement

The Purchase Department should prepare a comparative statement of quotations received in the order in which tenders were opened. In case of techno-commercial bid comparative statement will have information about deciding responsiveness and eligibility of bids and evaluation of technical suitability of offers. In case of Financial bid it would have information about rates quoted (including taxes or otherwise), discount, if any, and any other information having implications on ranking of bids etc. The comparative statement so prepared should be signed by the concerned officers. It may also be vetted by the Finance for veracity of information.

A briefing note is to be prepared by the executive for briefing the tender committee about the case. This is prepared after the opening of the tender and following should be tabulated in briefing note:

- (i) Eligibility criteria documents.

- (ii) Any other document submitted by the bidders.
- (iii) Submission of EMD.
- (iv) Any other condition/deviation by the bidders.

Note: Briefing Note/ comparative statement will be prepared by the committee nominated for tender opening. Briefing note should be vetted by the finance member of the tender opening committee.

8.3 Preliminary Examination

8.3.1 Unresponsive Tenders

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

- (i) The tender is not in the prescribed format or is unsigned or not signed as per the stipulations in the bid document.
- (ii) The required EMD has not been provided or exemption from EMD is claimed without acceptable proof of exemption.
- (iii) The 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).
- (vii) Tenderer has given conditions and deviations to the tender condition.

8.3.2 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;

8.3.3 Minor Infirmary/Irregularity/Non-conformity

During the preliminary examination, some minor infirmity and/or irregularity and/or non-conformity may also be found in some tenders. Such minor issues could be a missing pages/ attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document (if sought to be submitted offline, however, in e-procurement such submission of copies is not required). Other example being that the bidder submitted the amendment Bank Guarantee but omitted to submit the main portion of Bid Document. These amounts to minor irregularity(s). Such minor issues may be waived provided they do not constitute any material deviation [please refer to Para 8.4.1 (iv)] and financial impact and, also, do not prejudice or affect the ranking order of the tenderers.

Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by e-mail/registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform the purchaser's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

8.3.4 Clarification of Bids/Shortfall Documents

- (i) 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 e-mail/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.
- (ii) 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.
- (iii) 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 by signing the joint note. (Example: if the Permanent Account Number, registration with GST has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above).
- (iv) 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.
- (v) *Any shortfall document of a bidder submitted by another bidder in the same tender may be considered by TC.*

8.4 Evaluation of Responsive Bids and Decision on Award of Contract

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder who meets the qualification criteria and techno-commercial aspects. In case of Single Stage Single

Envelope Bidding, the evaluation of qualification of bidders, technical, commercial and financial aspect is done simultaneously. In Single Stage Two (or multiple) Envelopes, initially only the techno-commercial bids would be opened and evaluated for bids which successfully meet the qualification criteria and techno-commercial aspects. Financial bids of such successful bidders only would be opened for selecting the L1 bidder among these and in case of manual tenders, financial bids of unsuccessful bidders would be returned unopened to them. In Two Stage Bids, the PQB/EoI stage would have already been evaluated and this second stage is for evaluation of responses to the Second Stage two envelopes from the shortlisted qualified bidders.

8.4.1 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.

- (i) **Evaluation of eligibility/qualification Criteria:** RailTel 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 Purchase Departments 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 RailTel.
- (ii) **Evaluation of Technical Suitability:** The description, specifications, drawings and other technical terms and conditions are examined by TC in general and a technical member of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. The tender document should clearly state whether alternative offers/ makes/models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. 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 RailTel.
- (iii) **Evaluation of Commercial Conditions:** The TC will also evaluate the commercial conditions quoted by the tenderer to confirm that all terms and conditions specified in the GCC/ SCC have been accepted without reservations by the tenderer. Only minor deviations may be accepted/allowed, provided these do not constitute material deviations without financial impact and do not grant the tenderer any undue advantage vis-à-vis other tenders and RailTel.
- (iv) **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:

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

Note: Care should be taken that the waiver of minor deviation shall not lead to make ineligible bidders, eligible.

- (v) **Declaration of Successful Bidders:** If it is a two-envelope tender, then the TC prepares a recommendation of techno-commercial bid to declare successful bidders. In such cases, after the approval of CA, the results of the Techno-commercial bid evaluation are to be announced (including informing the failed Bidders). Price bids are opened in the presence of technically suitable bidders, who are willing to attend the bid opening, at a pre-publicized date, time and place or on the portal in case of e-Procurement. In single envelope/cover tender, TC proceeds to evaluate the price aspects without a reference to CA at this stage.

8.4.2 Right of Bidder to question rejection at Techno-commercial Stage

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/or his Techno-commercial bid has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. On receipt of representation, it may be decided whether to withhold opening of the financial bids and bidder may be expeditiously replied. Certain decisions of the procuring entity in accordance with the provision of internal guidelines shall not be subject to review as mentioned in para 8.6.2 below.

8.4.3 Evaluation of Financial Bids and Ranking of Tenders In general

The following general conditions for evaluation of financial bids should be considered:

- (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. It may happen, that sometimes, while purchasing sophisticated and costly equipment, and so on, the RailTel may decide to give 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, GST and duties etc., 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 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.

8.4.4 Evaluation of Concurrent Application: MSE and Make in India Procurement Orders

- (i) The concurrent application of the two procurement orders i.e. MSE Procurement Order of 2012 and PPP-MII Order may create confusion to the procuring entities on how to evaluate the bidders falling within the purview of both policies. In order to bring predictability both to the procuring entities as well as bidders, following guidelines were

issued by DoE⁷⁵. The guidelines were further disseminated by Ministry of Railways⁷⁶ RailTel that were further circulated by Ministry of Railways and by RailTel⁷⁷

(ii) **Guidelines**

The Class-I local suppliers, under PPP-MII Order, participating in any government tender, may or may not be MSEs, as defined under the MSME Act. Similarly, MSEs participating in any government tender, may or may not be Class-I local suppliers. Suppliers may be categorised in following four broad categories for consideration or applicability of purchase preference:

Category	Terminology
Supplier is both MSE & Class-I local supplier	"MSE Class-I local supplier"
Supplier is MSE but not Class-I local supplier	"MSE but non-Class-I local supplier"
Supplier is not MSE but is Class-I local supplier	"Non-MSE but Class-I local supplier"
Supplier is neither MSE nor Class-I local	"Non-MSE non-Class-I local supplier"

The applicability of PPP-MSE Order and PPP-MII Order in various scenarios, involving simultaneous purchase preference to MSEs and Class-I local suppliers under PPP-MSE Order and PPP-MII Order respectively, shall be as under:

- a. Items covered under Para 3(a) of PPP- MII Order, 2017⁷⁸ for which Nodal Ministry has notified sufficient local capacity and competition: For these items, only Class-I local suppliers are eligible to bid irrespective of purchase value. Hence, Class-II local suppliers or Non-local suppliers, including MSEs which are Class-II local suppliers/ Non-local suppliers, are not eligible to bid. Possible scenarios can be as under:
 1. L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 2. L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is given to MSEs as per PPP-MSE Order. Balance quantity is to be awarded to the L-1 bidder.
- b. Items reserved exclusively for procurement from MSEs as per PPP-MSE Order: These items are reserved exclusively for purchase from MSEs. Hence, non-MSEs are not eligible to bid for these items. Possible scenarios can be as under:
 1. L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 2. L-1 is "MSE non-Class—I local supplier" - Purchase preference is to be given to Class-I local supplier as per PPP-MII Order. Balance quantity, is to be awarded to L-1 bidder.

⁷⁵ Notified vide F.No. DPE/3(3)/10-Fin issued by Department of Public Enterprises, Ministry of Finance dated 29.05.2023 wherein OM No.F.1/4/2021-PPD issued by Department of Expenditure dated 18.05.2023 has been referred.

⁷⁶ No. 2020/RS(G)/779/2 (E 3319159) issued by Railway Board, Ministry of Railways dated 03.07.2023.

⁷⁷ Letter No. RCIL-CO0PROJ(MISC)/1/2023-O/o ED/POM/CO/RCIL dated 04.07.2023

⁷⁸ Notified vide P-45021/2/2017-PP(BE-II) issued by DPIIT, Ministry of Commerce dated 16.09.2020

- c. If items are neither notified for sufficient local capacity nor reserved for MSEs, then the process will be as follows:
1. Items covered under Para 3A(b) of PPP-MII Order are divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
 - c.1.1 L-1 is "MSE Class-I local supplier" - 100% of the tendered quantity is to be awarded to L-1.
 - c.1.2 L-1 is "Non-MSE but Class-I local supplier" - Purchase preference is to be given to MSEs, if eligible, as per PPP-MSE Order. Balance quantity is to be awarded to L-1 bidder.
 - c.1.3 L-1 is "MSE but non-Class-I local supplier" - Purchase preference is to be given to Class-I local suppliers, if eligible, as per PPP-MII Order. Balance quantity is to be awarded to L-1 bidder.
 - c.1.4 L-1 is "Non-MSE non-Class-I local supplier" - Purchase preference is to be given to MSEs as per PPP-MSE Order. Thereafter, purchase preference is to be given to Class-I local suppliers for "50% of the tendered quantity minus quantity allotted to MSEs above" as per PPP-MII Order. For the balance quantity, contract is to be awarded to L-1 bidder. (Kindly refer to the illustrative example in the annexure-9).
 2. Items covered under Para 3A(c) of PPP-MII Order, 2017 are non-divisible items and both MSEs as well as Class-I local suppliers are eligible for purchase preference. Possible scenarios can be as under:
 - c.2.1 L-1 is "MSE Class-I local supplier" - Contract is awarded to L-1.
 - c.2.2 L-1 is not "MSE Class-I local supplier" but the "MSE Class-I local supplier" falls within 15% margin of purchase preference Purchase preference is to be given to lowest quoting "MSE Class-I local supplier". If the lowest quoting "MSE Class-I local supplier" does not accept the L-1 rates, the next higher "MSE Class-I local supplier" falling within 15% margin of purchase preference is to be given purchase preference and so on.
 - c.2.3 If conditions mentioned in sub paras c.2.1 and c.2.2 above are not met i.e. L-1 is neither "MSE Class-I local supplier" nor "MSE Class-I local supplier" is eligible to take benefit of purchase preference, the contract is to be awarded/ purchase preference to be given in different possible scenarios as under:
 - c.2.3.1 L-1 is "MSE but non-Class-I local supplier" or "Non-MSE but Class-I local supplier" — Contract is to be awarded to L-1.
 - c.2.3.2 L-2 is "Non-MSE non-Class-I local supplier" - First purchase preference to be given to MSE as per PPP-MSE Order. If MSE is not eligible/ does not accept - purchase preference to be given to Class- I Local supplier as per PPP-MII Order. If Class-I Local supplier also not eligible/ does not accept contract to be awarded to L-1.

- d. Items reserved for both MSEs and Class-I local suppliers: These items are reserved exclusively for purchase from MSEs as well as Class-I local suppliers. Hence, only "MSE Class-I local supplier" are eligible to bid for these items. Non-MSEs/Class-II local suppliers/ Non-local suppliers cannot bid for these items. Hence the question of purchase preference does not arise.
- e. Non-local suppliers, including MSEs falling in the category of Non-local suppliers, shall be eligible to bid only against Global Tender Enquiry.

8.4.5 GTE Tenders

Special aspects of evaluation of the financial offer in GTE tenders are:

(i) **Currency of Tender**

In GTE tenders, the price in the quotation could be in US Dollar or Euro or Pound Sterling or Yen or in currencies under the RBI's notified basket of currencies, in addition to the Indian Rupees, except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. All offers are to be converted to Indian Rupees based on the "Bill currency selling" exchange rate on the date of tender opening (Techno-commercial offer) from a source as specified in the tender document.

(ii) **Currency of Payment**

The contract price will be normally paid in the currency/currencies in which the price is stated in the contract.

(iii) **Evaluation of Offers**

As per Government policy, Ministries/Departments/Public Sector Undertakings (PSUs) should ensure imports on FOB/FAS basis failing which a No Objection Certificate (NOC) should be obtained from the Ministry of Surface Transport (Chartering Wing).

- (iv) The foreign bidders are normally asked, in the bid documents, to quote both on FAS/FOB basis and also on Cost and Freight (CFR)/CIF basis duly indicating the break-up of prices for freight, insurance, and so on, with purchasers reserving the right to order on either basis. They should also indicate the custom tariff number and custom duty applicable in India. In the case of FAS/FOB offers, the freight and insurance shall be (after ascertaining, if not quoted) added to make up the CIF cost. To arrive at the Free On Rail (FOR) cost, one per cent shall be added over and above CIF as port handling charges, custom duty, countervailing duty and surcharges, as applicable on the date of opening of the tender, as well as clearing agency charges, inland freight and Octroi/ entry tax, as assessed, may be added to make it a FOR/Free On Truck (FOT) destination. The FOR/FOT destination price for domestic offers may be calculated as in OTE tenders. For bids with Letter of Credit (LC) payment, the likely LC charges (as ascertained from Procuring Entity's bankers) should also be loaded.

- (v) In case both Indian and foreign bidders have quoted in the tender, the comparison of the offers would be done on the basis of FOR/FOT destination including all applicable taxes and duties (on the principle of the total outgo from Procuring Entity's pockets). In case there are no domestic bidders, a comparison of offers can be made on the basis of CIF/landed costs since the rest of costs would be same for all bidders.

8.5 Deliberations by the Tender Committee for Award of Contract

8.5.1 Timely Processing of Tenders

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. To enable timely decision making, complete Time schedule of finalising the Tender process from the date of issuing the tender to date of issuing the contract, should be published in the Bid Documents. Every official in the chain of the procurement operation is accountable for taking action in a specified time so that the tender is finalised on time. Any deviation from the schedule may be monitored and explained, by way of system of Management Reporting. As a check, the proposed schedule of tender process may be printed on the inside cover of the Procurement File, where actual date of completion of various stages may be recorded. The suggestive time schedule is a guideline for finalising contracts against various modes of procurements.

Indicative time schedule

SL. No.	Mode of Procurement	Indigenous	Imported
1	Open tender/(e-tendering)	60days	90 days
2	Procurement through registered vendors/ (Special) limited tenders	30 days	45 days
3	Proprietary basis/nomination basis	21days	30 days

- (i) This time schedule is only indicative and the schedule shall be subject to change based on the nature of requirements, sourcing, sample evaluation, POC, site visit/ pre-bid meeting with prospective bidders and Government, guidelines, and so on.
- (ii) Under all circumstances the tenders should be finalized within original bid validity period.
- (iii) Reasons for delay in finalization of tenders after expiry of original bid validity (if any) should be recorded by Tender Committee in its report.
- (iv) Reasons for delay in finalization of tender after expiry of original validity period should be analysed and measures should be taken to avoid such occurrences in the future.
- (v) The status of tenders should be periodically reviewed by concerned Regional Heads/Head of Department for taking corrective action(s) as required.

Note: Suitable timelines within the validity period and monitoring mechanisms thereof may be devised by Railways /PUs. Strict adherence to such timelines in all the circumstances should be ensured⁷⁹.

Authority: Rule 174 (i) of GFR 2017.

8.5.2 Extension of Tender Validity Period

- (i) The entire process of scrutiny and evaluation of tenders, preparation of ranking statement and notification of award must be done expeditiously and within the original tender validity period⁸⁰[Rule 174 (iii) of GFR 2017]. The validity period should not be

⁷⁹Railway Board's letter No. 2007/RS (G)/779/3 dated 29.12.2017

⁸⁰Rule 174 (iii) of GFR 2017

unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

- (ii) If, however, due to some exceptional and unforeseen reasons, the purchase organisation is unable to decide on the placement of the contract within the original validity period, it may preferably request, before expiry of the original validity period, all the responsive tenderers to extend their tenders up to a specified period. While asking for such extension, the tenderers are also to be asked to extend their offers as it is, without any changes therein. They may also be told to extend the validity of the EMD for the corresponding additional period (which is to be specified in the request). A tenderer may not agree to such a request and this will not be tantamount to forfeiture of its EMD. But the tenderers, who agree to extend the validity, are to do so without changing any terms, conditions, and so on, of their original tenders.

8.5.3 Variation of Quantities at the Time of Award/Option Clause⁸¹

- (i) At the time of awarding the contract, the quantity to be procured must be re-judged based on the current data, since the ground situation may have very well changed. The tendered quantity can be increased or decreased by 30 (Thirty per cent) for ordering, if so warranted. This may be mentioned in the tender documents. Any larger variation may throw up issues about transparency.
- (ii) The provision of + (plus) 30% Option Clause shall be inserted in tenders as a Special Condition of Contract with a minimum purchase value of Rs. 1.5 Crores, for fixed quantity contracts, for procurements of materials of which the requirements are of continuing nature. However, such a threshold for inclusion of Option Clause may be decided by RailTel as deemed fit.
- (iii) The provision of - (minus) 30% option clause shall not be insisted in the tenders/contracts.
- (iv) **Approval for Option Clause**

While deciding the acceptability of tenders/contracts, the value of quantity under "+30% Option Clause" will be excluded from the value of tenders for determining the level of competency of acceptance.

- (v) **Operation of Option Clause**

- a. Option Clause may be operated by the Competent Authority within his powers of Tender Acceptance [for original quantity + (plus) quantity under Option Clause]. For Non-TC cases, Finance concurrence would be required for those purchase orders, where with option clause quantity, the value of contract is within vetting limit of purchase order. However, Operation of 30% option Clause in TC cases to be done without Finance Concurrence and only Amendment to the Contract to be vetted by Finance.

⁸¹Railway Board letter No.2021/RS(G)/779/5 dated 04.03.2022

- b. The Competent authority for operating +30% option clause shall be determined on the value of entire quantity (i.e. original tender quantity +30% option clause quantity)
- c. Where the + (plus) 30% quantity option leads to fractional quantities, these may be rounded off to the next higher number, if the fraction obtained is 0.5 or more.
- d. Option Clause may be operated only where there is clear demand for additional quantities and benefits accrue to RailTel in terms of existing contractual rates being reasonable/ lower than newly opened Tendered rates, if available.
- e. While exercising Option Clause on firm/ firms, it must be ensured that the performance of the firm/ firms on whom option is proposed to be exercised is satisfactory in the present contract vis-a-vis the firm/firms on whom also the orders have been placed in the same tender for the same item.
- f. Option Clause can be exercised anytime within the Delivery period, by giving reasonable notice.
 - 1. Reasonable notice' as mentioned above is only for the purpose of allowing the contractor suitable time to make necessary arrangements for the supplies and not for seeking any consent from the contractor towards exercise of the contractual option clause. To this end, a reasonable delivery schedule for the enhanced ordered quantity stipulated in the relevant Amendment to the Contract will suffice.
- g. In a contract that provides for quantity option clause, in case Delivery Period is extended either for the full ordered quantity or a part quantity which remained unsupplied on the date of expiry of the original delivery period, then during the extended delivery period also, quantity variations can be made on the total ordered quantities.
- h. Cases involving exercise of Option Clause must be processed well in advance of expiry of DP/extended DP. In Non-TC cases, the proposal for concurrence including the Amendment to the Contract must be concurred/vetted simultaneously by Finance. In TC cases, only Amendment is to be vetted by Finance.

8.5.4 Splitting of tendered quantity⁸²⁸³

- (i) **Case of no prior decision to split the order:** Normally full order should be placed on L-1 firm.
- (ii) However, RailTel may decide in advance to have more than one source of supply on account of delivery requirement in tender, past performance and capability of bidders, quantity under procurement and vital/safety nature of items. The splitting of the quantity should be 65% and 35% among L1 and L2 respectively provided L2 matches the price of L1. In case L2 refuses the rate of L1 then full quantity will be awarded to L1.

⁸²Railways Board's letter No.99/RS(G)/779/2 dated 11.02.2016

⁸³RCIL/CO/2017/O&M/Procurement/Amendment in Tender Documents/053/ Vol-1 dated 28.11.2019

8.5.5 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".
- (viii) Other methods for checking the reasonability of the price are LPP along with WPI, AOR and Market survey.
- (ix) In case item is being procured first time then following methods may be adopted by TC for checking the rates reasonability.
 - a. Market Survey
 - b. Rates from other source/organization with same specifications.
 - c. Rate Analysis.

8.5.6 Consideration of Abnormally Low Bids

- (i) 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 bid 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 purchaser 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.

- (ii) In the case of predatory pricing as well, purchaser may refer to the above consideration of Abnormally Low Bids to assist themselves in finalization of tenders⁸⁴.
- (iii) No provisions should be kept in the Bid Documents regarding the Additional Security Deposit/ Bank Guarantee (BG) in case of Abnormally Low Bids. Wherever, there are compelling circumstances to ask for Additional Security Deposit/ Bank Guarantee (BG) in case of ALBs, the same should be taken only with the approval of the next higher authority competent to finalise the particular tender⁸⁵.

8.5.7 Cartel Formation/Pool Rates

It is possible that sometimes a group of bidders quote the same rate against a tender. Such pool/cartel formation is against the basic principle of competitive bidding and defeats the very purpose of an open and competitive tendering system. Such and similar tactics to avoid/control true competition in a tender leading to “Appreciable Adverse Effect on Competition” (AAEC) have been declared as an offence under the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007. Such practices should be severely discouraged with strong measures. In case of evidence of cartel formation, detailed cost analysis may be done by associating experts if necessary. Besides, suitable administrative actions can be resorted to, such as rejecting the offers, reporting the matter to trade associations, the Competition Commission or NSIC, etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves registered for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (GTE instead of OTE) and packaging/slicing of the tendered quantity and items may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

8.5.8 Negotiations

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

⁸⁴In reference to OM No.F.12/17/2019-PPD issued by Department of Expenditure dated 06.02.2020

⁸⁵Notified vide OM No. F.9/4/2020-PPD issued by Department of Expenditure dated 12.11.2020

- b. Procurement is from single or limited sources;
 - c. Procurements where there is suspicion of cartel formation which should be recorded; and
 - d. Where the requirements are urgent and the delay in re-tendering for the entire requirement due to the unreasonableness of the quoted rates would jeopardize 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.
 - e. Negotiation can be held with L1 after Reverse Auction process is completed. It should be mentioned in the tender document that RailTel reserves the right to hold negotiation with the bidder who becomes L1 after the completion of Reverse Auction process.
- (ii) The decision whether to invite fresh tenders or to negotiate and with whom, should be made by the tender accepting authority based on the recommendations of the TC. Convincing reasons must be recorded by the authority recommending negotiations. The CA should exercise due diligence while accepting a tender or ordering negotiations or calling for a re-tender and a definite timeframe should be indicated.
 - (iii) Normally all counter offers are considered negotiations by other means and the principles of negotiations should apply to such counter offers. For example, a counter offer to L1, in order to arrive at an acceptable rate, shall amount to a negotiation. However, any counter offer to L2, L3, and so on (at the rates accepted by L1) in case of splitting of quantities shall not be deemed to be a negotiation.
 - (iv) After the CA has decided to call a specific bidder for negotiation, the following procedure should be adopted:
 - a. It must be understood that, if the period of validity of the original offer expires before the close of negotiations, the original offer will not be available for acceptance. The period of validity of the original offer must, therefore, be extended, wherever necessary, before negotiations;
 - b. The tenderer to be called in for negotiations should be addressed as per the format of letter laid down in Annexure -10, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation;
 - c. A negotiations meeting should be started only after obtaining a signed declaration from the negotiating supplier as per Annexure-10; and
 - d. Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the format of letter laid down in Annexure-11. The revised bids so obtained should be read out to the tenderers or their representatives present, immediately after completing the negotiations. If necessary, the negotiating party may be given some time to submit its revised offer. In case, however, the selected bidder prefers to send a revised bid instead of being present at the negotiation, the offer should be taken into account. In case a bidder does not submit the revised bid, its original bid shall be considered.

Authority: Rule 173 (xiv) of GFR 2017

8.5.9 Consideration of Lack of Competition in OTE/ GTE and LTE⁸⁶

- (i) Sometimes, against advertised/limited tender cases, the procuring entity may not receive a sufficient number of bids and/or after analysing the bids, ends up with only one responsive bid a situation referred to as 'Single Offer'. As per Rule 21 of DFPR (explanation sub-para), such situation of 'Single Offer' is to be treated as Single Tender. It should not be a practice to routinely assume that open tenders which result in single bids are not acceptable, and to go for re-tender as a 'safe' course of action. This is not correct. Re-bidding has costs: firstly, the actual costs of retendering; secondly the delay in execution of the work with consequent delay in the attainment of the purpose for which the procurement is being done; and thirdly the possibility that the re-bid may result in a higher bid⁸⁷.
- (ii) Even when only one Bid is submitted, the process may be considered valid provided following conditions are satisfied:
 - a. The procurement was satisfactorily advertised and sufficient time was given for submission of bids.
 - b. The qualification criteria were not unduly restrictive; and
 - c. Prices are reasonable in comparison to market values
- (iii) However restricted powers of Single tender mode of procurement would apply. In case of price not being reasonable, negotiations (being L1) or retender may be considered as justifiable.
- (iv) Unsolicited offers against LTEs should be ignored, though there should be a system by which interested firms can register and bid in next round of tendering. However, under the following exceptional circumstances, these may be considered for acceptance at the next higher level of competency:
 - a. Inadequate Competition
 - b. Non-availability of suitable quotations from registered vendors
 - c. Urgent demand and capacity/capability of the firm offering the unsolicited being known, etc.

8.5.10 Cancellation of Procurement Process/ Rejection of All Bids/Re-tender⁸⁸

- (i) The purchasing department may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to re-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,

⁸⁶ Rule 173 (xix) and (xxi) of GFR 2017

⁸⁷As stated under para 11.8 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 20.10.2021

⁸⁸ Rule 173 (xix) of GFR 2017

all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:

- a. If the quantity and quality of requirements have changed substantially or there is an un-rectifiable infirmity in the bidding process;
 - b. when none of the tenders is substantially responsive to the requirements of the Procurement Documents;
 - c. none of the technical Proposals meets the minimum technical qualifying score;
 - d. If effective competition is lacking. However, lack of competition shall not be determined solely on the basis of the number of Bidders. (Please refer to para above also regarding receipt of a single offer).
 - e. the Bids'/Proposals' prices are substantially higher than the updated cost estimate or available budget;
 - f. If the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required, or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the purchasing department shall re-tender the case⁸⁹.
- (ii) 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 purchasing department 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.

8.5.11 Handling Dissent among TC Members

- (i) Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluation, but they would still be answerable for such decisions. TC members cannot co-opt or nominate others to attend deliberations on their behalf. TC deliberations are best held across the table and not through circulation of notes.
- (ii) All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In case where it is not possible to come to a consensus and differences persist amongst TC members, the reasons for dissent of a member should be recorded in a balanced manner along with the majority's views on the dissent note. The final recommendations should be that of the majority view. However, such situations should be rare. The CA can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

⁸⁹OM No. DPE/7(4)/2017-Fin issued by Department of Public Enterprises, Ministry of Finance, dated 12.05.2022, circulating the OM F.1/1/2021-PPD issued by Department of Expenditure dated 21.04.2022 on this subject.

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

8.5.12 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/noting 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 reports⁹⁰.

8.5.13 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. Since a nominee from Finance department is usually a member of the Tender Committee, there is no need for the CA to consult the Finance before accepting the TC recommendations. 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.
- (v) After the acceptance of these recommendations by the tender accepting authority, the Letter of Acceptance (LoA) can be issued.

⁹⁰Railway Board Letter No: 2004/V-I/CVC/1/18, dated 02.01.2006

8.6 Award of Contract

8.6.1 LoA to Successful Bidder

- (i) 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. Communication of acceptance of offer is considered complete as soon as it is received and confirmed by the bidder on email. Hard copy is to be sent by courier/ by hand. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period.
- (ii) In respect of bigger contracts, where tender documents include the Standard condition of Contract, Special Condition of Contract and schedule of requirements, the letter of acceptance will result in a binding contract. All delivery liabilities would be counted from the date of LoA.
- (iii) The details of award of contract and name of the successful tenderer should be mentioned mandatorily on the CPPP and on website of RailTel. In cases, where RailTel compete with private firms in public tenders, publication of details of contracts awarded by RailTel to various sub-vendors, suppliers, technology providers and other associates before firming up their offer, may hurt the interest of RailTel as the competitors may get to know the details of sub-vendors, suppliers, technology providers and other associates as well as the price at which the contracts are placed. Therefore, in such cases, publication of details of contracts awarded may be dispensed with.

8.6.2 Bidder's right to question rejection after award of the contract

A tenderer shall have the right to be heard in case he feels that a proper procurement process is not being followed and/ or his tender has been rejected wrongly. The tenderer is to be permitted to send his representation in writing. Bidding documents should explicitly mention the name, designation and contact details of officers nominated to receive representations in this regard. Such representation has to be sent within 10 (ten) days from the date of LOA. The procuring department should ensure a decision within 15 (fifteen) days of the receipt of the representation. Only a directly affected bidder can represent in this regard:

- (i) Only a bidder who has participated in the concerned procurement process i.e. pre-qualification, bidder registration or bidding, as the case may be, can make such representation.
- (ii) In case pre-qualification bid has been evaluated before the bidding of Technical/ financial bids, an application for review in relation to the technical/ financial bid may be filed only by a bidder has qualified in pre-qualification bid.
- (iii) In case technical bid has been evaluated before the opening of the financial bid, an application for review in relation to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.
- (iv) Following decisions of the procuring department/ RailTel in accordance with the provision of internal guidelines shall not be subject to review:

- a. Determination of the need for procurement.
- b. Selection of the mode of procurement or bidding system.
- c. Choice of selection procedure.
- d. Provisions limiting participation of bidders in the procurement process.
- e. The decision to enter into negotiations with the L1 bidder.
- f. Cancellation of the procurement process except where it is intended to subsequently re-tender the same requirements.

8.6.3 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.

8.6.4 Acknowledgement of Contract by Successful Bidder and Execution

- (i) 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.
- (ii) The supplier should acknowledge and unconditionally accept, sign, date and return the agreement within 14 (Fourteen) days from the date of issue of the contract in case of OTE. 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).
- (iii) All contracts shall be signed and entered into after receipt and verification of the requisite performance security, by an authority empowered to do so under the SOP of RailTel. The agreement should be signed "for and on behalf of RailTel Corporation of India Ltd" followed the designation appended below the signatures of the officers authorized on this behalf.

8.7 Issue of Purchase Orders

After the acceptance of the tender by the Competent Authority as per provision of the SOP, purchase order shall be issued after vetting by finance if required as per SOP with the signature of the Competent Authority as per SOP.

8.8 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.

Chapter 9: Contract Management

9.1 Contract Management

The purpose of contract management is to ensure that the contractor 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) Accountable and payment of bills; and
- (xiii) Storage and issue of inspected goods.

9.2 Amendment to the Contract

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

- (iii) An amendment can concern any of the clauses of the contract but, in supply contracts, amendments often relate to the following:
 - a. Increase or decrease in the quantity required, exercise of quantity option clause;
 - b. Changes in schedule of deliveries and terms of delivery
 - c. Changes in inspection arrangements;
 - d. Changes in terms of payments and statutory levies; and
 - e. Change due to any other situation not anticipated.
- (iv) 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.

9.3 Option Clause

9.3.1 Option Clause

- (i) Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract. This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 30% (refer clause 8.5.3). Approval should be taken from the CA (who originally approved the tender decision) to exercise the option clause based on the value of the contract with the increased quantity. In case the recalculated value of the contract goes beyond the delegation of powers of the original CA, approval of the CA for the enhanced value may be taken.

“The purchaser reserves the right to increase the ordered quantity by up to (*indicate percentage*) at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period).”

- (ii) The provision for Option clause can be exercised in case of PAC/single supplier OEM cases also.
- (iii) Where parallel contracts on multiple suppliers are available, care should be taken in exercising the option clause, so that the original tender decision of splitting quantities and differential pricing is not upset or vitiated. Other things being equal, the supplier with the lower rate should first be considered for the option quantity.

9.4 Safeguards for Handing over Materials/Equipment to Contractors in Project Execution

- (i) For performance of certain contracts, purchasing department/ project executing department of RailTel may have to loan stores, drawings, documents, equipment and assets (such as accommodation, identity cards and gate passes, and so on) to the contractor. In certain situations, the contractor may also be supplied electricity, water, cranes, and weighing facilities on payment/hire basis. As a measure of transparency, the following guidelines should be followed in this regard⁹¹:

⁹¹ RailTel's letter no. RCIL-COOFIN(MISC)/6/2020-O/o Addl.GM/Finance/CO/RCIL dated 25.01.2023

- a. The material should be issued to the contractor considering the consumption requirement of not more than 60 days, in order to ensure that excessive material should not be in warehouse of contractor.
 - b. All materials issued to contractor should be recorded and receipt of materials by the contractor shall be mandatory document under project code in ERP.
 - c. Monthly reconciliation of the consumption of material shall be carried out.
 - d. At the time of payment in regard to work executed, the said reconciliation till the date of invoice/measurements raised by the contractor shall be the mandatory document.
 - e. At the end of project, total reconciliation of material shall be carried out and Provisional Acceptance Certificate (PAC) shall be issued only after complete material reconciliation and taking back the balance materials available with the contractor. Any short fall in materials shall be recovered from Contractor as per terms of the contract.
 - f. All risk policies covering the material shall be required to be taken before issue of material from contractor.
 - g. The said norms should be adhered to by project in-charge during project execution.
- (ii) Such provision for material security should be announced in the tender document. The purchasing department may decide if any costly or a sophisticated equipment/ prototype is being given to the contractor to assist him in the project execution, a suitable bank guarantee or appropriate insurance may be asked from the contractor.

9.5 Payments to the Contractor and Handling of Securities

- (i) 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.
- (ii) 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.

9.6 Monitoring of Supplier Performance

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

performance of the suppliers in a contract would also be useful in selecting a good supplier in future procurement of the same or similar materials. 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.

9.7 Delays in Performance of Contract

9.7.1 Delivery Period

The period for delivery of the ordered goods and completion of any allied service(s) thereof (such as installation and commissioning of the equipment, operators' training, and so on) are to be properly specified in the contract with definite dates and these shall be deemed to be the essence of the contract.

9.7.2 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.

9.7.3 Extension of Delivery

- (i) 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 moto 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 moto in the interest of the organisation. In such cases, it is legally necessary to obtain clear acceptance of the extension letter from the supplier.
- (ii) 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 RailTel's rights and remedies under the terms and conditions of the subject contract and without any commitment or obligation."
- (iii) 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:

- a. That a higher rate in the original tender was not accepted against other lower quotations in consideration of the earlier delivery; and
 - b. 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.
- (iv) *The indenter/user will propose extension in delivery with recommendations regarding loss and inconvenience due to delay and considering clause 9.7.4, in case delay in supplies for which supplier is not responsible.*
- (v) 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 in laid down format given in Annexure-12.

9.7.4 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.

9.7.5 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. *The performance notice shall be issued within delivery period.* The standard format for performance notice is given in Annexure-12.

9.7.6 Force Majeure Clause

- (i) 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.
- (ii) 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 clause⁹².

9.7.7 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.

9.7.8 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.

⁹² Letter No. 2011/RS(G)/779/7 issued by Railway Board, Ministry of Railways dated 19.01.2023 and 08.05.2012 may be referred for further information related to Force Majeure clause.

9.7.8.1 Quantum of LD

- (i) If the supplier fails to deliver the stores or any installment thereof within the period fixed for such delivery in the contract or as extended or at any time repudiates the contract before the expiry of such period the Purchaser may without prejudice to his other rights recover from the Contractor, as agreed, the LD a sum equivalent to 0.5 (half) per cent of the prices of any stores (including elements of taxes, duties, freight, etc.) which the Contractor has failed to deliver, within the period fixed for delivery in the contract or as extended for each week or part of a week, during which the delivery of such stores may be in arrears, where delivery thereof is accepted, after expiry of the aforesaid period. The upper limit for recovery of liquidated damages will be 10% (Ten Percent) of Total contract value provided in the contract.⁹³
- (ii) 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.

9.7.8.2 Waiver of LD

There should normally be no system of waiver of LDs for delayed supplies in supply contracts and it may be strictly be an exception rather than a rule. For an extension of the delivery date with waiver of LD, approval of the CA with consultation of associated Finance may be taken and justifications recorded. *Even in the case of extension without LD where supplier is not responsible, the approval of CA in consultation of finance will be taken.*

9.7.9. Handling Deliveries after the Expiry of Delivery Period

- (i) As per law, if stores are accepted after expiry of the delivery date of a particular installment 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.
- (ii) 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. Following para should be added for communication with the contractor in this regard:

“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 purchaser under the terms and conditions of the contract.”

⁹³ Purchasers may refer to the Letter No. 2003/RS(G)/779/9 issued by Railway Board, Ministry of Railways dated 11.04.2018 pertaining to the methodology for calculating LD.

- (iii) 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. Format for extension of delivery period is placed at Annexure-12. A model format for correspondence with the supplier after the expiry of delivery period is placed at Annexure-14.

9.8 Breach of Contract, Remedies and Termination

- (i) In case the contractor is unable to honor important stipulations of the contract, or gives notice of his intention of not honoring or his inability to honor 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.
- (ii) 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.

9.8.1 Cancellation of Contract for Default

- (i) 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:
 - a. 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
 - b. If the supplier fails to perform any other obligation under the contract within the period specified in the contract or any extension thereof granted.
 - c. If the contract is terminated in whole or in part, recourse may be taken to any one or more of the following actions:
 - 1. Forfeiture of the performance security;

2. However, the supplier shall continue to fulfill the contract to the extent not terminated.
- (ii) Before cancelling the contract and taking further action, it may be desirable to obtain legal advice.

9.8.2 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 RailTel.

9.8.3 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.

9.9 Dispute Resolution

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

9.9.1 Arbitration Clause

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

9.9.1.1 Arbitration and dispute resolution

- (i) During operation of the contracts, issues and disputes arising due to lack of clarity in the contract become the root cause of litigation. Litigation has adverse implications on the timelines and overall cost of the project. Before resorting to arbitration/litigation, the parties may opt for mutual discussion, mediation, and Conciliation for the resolution of disputes.
- (ii) Arbitration /court awards should be critically reviewed. In cases where there is a decision against government / public sector enterprise (PSE), the decision to appeal should not be taken in a routine manner, but only when the case genuinely merits going for the appeal and there are high chances of winning in the court/ higher court. There is a perception that such appeals etc. are sometimes resorted to postpone the problem and defer personal accountability. Casual appealing in arbitration / court cases has resulted in payment of heavy damages / compensation / additional interest cost, thereby causing more harm to the exchequer, in addition to tarnishing the image of the Government.
- (iii) The Organisation should monitor the success rate of appealing against arbitration awards. There should be a clear delegation to empower officials to accept arbitration / court orders. A special board / committee may be set up to review the case before an appeal is filed against an order. Arbitration /court awards should not be routinely appealed without due application of mind on all facts and circumstances including realistic probability of success. The board / committee or other authority deciding on the matter shall clarify that it has considered both legal merits and the practical chances of success and after considering the cost of, and rising through, litigation / appeal / further litigation as the case may be, it is satisfied that such litigation / appeal / further litigation cost is likely to be financially beneficial compared to accepting the arbitration / court award.
- (iv) Statistics have shown that in cases where the arbitration award is challenged, a large majority of cases are decided in favour of the contractor. In such cases, the amount becomes payable with the interest, at a rate which is often far higher than the government's cost of funds. This results in huge financial losses to the government. Hence, in aggregate, it is in public interest to take the risk of paying a substantial part of the award amount subject to the result of the litigation, even if in some rare cases of insolvency etc. recovery of the amount in case of success may become difficult. Instructions have been issued in this matter in the past, but have not been fully complied with.
- (v) The only circumstances in which such payment need not be made is where the contractor declines, or is unable, to provide the requisite bank guarantee and/or fails to open a escrow account as required. Persons responsible for not adhering to are liable to be held personally accountable for the additional interest arising, in the event of the final court order going against the procuring entity⁹⁴.

⁹⁴As notified under para 16.1 to 16.5 of OM No.F.1/1/2021-PPD issued by Department of Expenditure dated 29.10.2021

9.9.1.2 Foreign Arbitration

- (i) 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.
- (ii) 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.
- (iii) 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.

9.9.1.3 Arbitration Awards

- (i) In cases where the RailTel has challenged an arbitral award and, as a result, the amount of the arbitral award has not been paid, 75% of the arbitral award (which may include interest up to date of the award) shall be paid by RailTel to the contractor/ concessionaire against a Bank Guarantee (BG). The BG shall only be for the said 75% of the arbitral award as above and not for the interest which may become payable to RailTel should the subsequent court order require refund of the said amount.
- (ii) The payment may be made into a designated Escrow Account with the stipulation that the proceeds will be used first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of RailTel as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of RailTel may be allowed to be used by the contractor/ concessionaire with the prior approval of the lead banker and RailTel. If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against BG.]⁹⁵

9.10 Closure of Contract

While making the final payment to the contractor and before releasing the PBG, it should be ensured that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/final payment. Before the bank guarantee is released a "No Claim Certificate" may be taken from the contractor. A format for No Claim Certificate is placed at Annexure-15

9.10.1 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.

⁹⁵New rule 227A of GFR, 2017 notified vide OM No. F./1/9/2021-PPD issued by Department of Expenditure dated 29.10.2021.

9.10.2 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 Department's satisfaction, as per the contract:

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

9.10.3 Payment Reconciliation

- (i) The indenting/materials management Departments/paying authority 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.
- (ii) 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.
- (iii) On completion of all activities against a contract, the purchase file should be preserved for a period for five years or as per the document retention policy of RailTel in the record room and then destroyed after expiry of the applicable mandatory retention period with the approval of the CA. However, RailTel, at its discretion, may retain important records for future reference.

9.11 Goods Receiving

9.11.1 Transportation of Goods

- (i) Where critical equipment of high value is involved, suitable special instructions shall be conveyed to the supplier about the mode of transport, loading, avoidance of transshipment and, if necessary, provision of escorts. In case of chemicals, powdery

materials, liquid materials, and so on, parties may be advised on proper packaging to avoid spillage en route, so as to avoid pollution problems and also to conform to the ISO 14001 standard. In case transport is arranged by Procuring Entity, suitable instructions may be incorporated in the transportation contract accordingly.

- (ii) Wherever the items make a full truck load, the suppliers should be advised to dispatch such items in a full truck direct to the consignee on a door delivery basis to the site. In such cases, the purchasing department shall advise the supplier to send a consignee copy of the lorry receipt to the consignee along with the consignment and the consignment shall be booked to RailTel and not "self". The supplier shall be specifically asked to dispatch the consignments to the designated consignee. All dispatch documents, that is, railway/lorry receipt, goods consignment note, airway bill, invoices, packing list, freight memos, test certificate, and so on, shall be sent to the Finance division which will arrange to make the payment. If the payment is to be made through the bank, all original documents are to be sent through the designated bank.

9.12 Quality Assurance and Inspection

- (i) In the context of procurement of goods, the Quality Assurance (QA) process is needed to provide adequate confidence that a procured product will satisfy the laid down standards of quality and serve the purpose for which it is being procured. QA consists of three components:
 - a. Defining quality standards;
 - b. Planning assurance of quality; and
 - c. Measurement of quality.
- (ii) The description and technical suitability define the quality standards expected from the product. Planning for QA is done by way of specifying the qualifications criteria for the suppliers to ensure that they do have the technical, infrastructure and financial capabilities to meet the required quality standards. Specifications also lay down quality control requirements to indicate parameters, target values, tolerances and method of measurement of various parameters that constitute the standards of quality. This also involves laying down the type of inspection, agency for inspection. Measurement of quality is done through a scheme of inspections at the contract management stage and laying down the actual process of inspection.

9.12.1 Inspections – Measuring Quality Standards

The stages and modes of inspection may vary depending on the nature of the goods, total value of the contract, location of the supplier, location of the user, and so on. Depending on the nature of goods being procured, usually, the following types of inspection may be adopted:

- (i) **Pre-dispatch Inspection**
 - a. A pre-dispatch inspection may be conducted either during various stages of the production process (which is known as stage inspection) or on production of the finished products, but before dispatch of the goods from the supplier's premises. Stage inspection may be used for highly technical goods whose quality of the manufacturing process is likely to have considerable effect on the final quality and durability of the goods. Even after pre-dispatch inspections, these materials should be inspected again on receipt, as a matter of abundant precaution.

- b. Inspection of the materials before dispatch shall be carried out by the inspection agency nominated in the contract or by its representative at the premises of the supplier in accordance with the inspection procedure laid down and incorporated in the purchase order.
- c. The testing charges for samples should be borne by the supplier and this should be made clear at the enquiry stage itself to avoid claims at a later date/or effect on his position in comparative statement of offers. Any special testing involving financial implications shall be settled prior to placement of the order and such cost should form part of the evaluation.
- d. In case of offshore supplies, the inspection clause shall be incorporated in the purchase order wherever required:
 - 1. Procuring Entity may depute its representative or a third party inspection agency to the supplier's manufacturing premises to carry out/witness inspection and testing, performance testing at its discretion;
 - 2. Alternatively, Procuring Entity shall retain an option to waive the above and accept the material based on the supplier's internal test report, guarantee and fitment certificate. In this regard, the written approval of the HOD of the Indenting department should be obtained recording the reasons for it; and
 - 3. Whenever the inspection is carried out at the supplier's manufacturing premises, an inspection on receipt of goods at Procuring Entity shall also be carried out by an officer of the Indenting Department or a third party inspection agency, as the case may be, on receipt of the goods.

(ii) Inspection of Goods on Receipt at Consignee/User's Site

- a. Post-delivery inspection is carried out on receipt of goods before accepting them. This should be typically done for goods that are available off-the-shelf and are BIS marked. All final goods that may be directly consumed or utilised on delivery (excluding machinery installations, and so on) and for which detailed inspection of the manufacturing process is not required and only a physical inspection regarding their physical characteristics is required, may be inspected using this method. On receipt of goods at stores, the storekeeper should immediately notify the officer nominated for inspection, requesting to schedule an inspection. The inspecting officer should then fix a date for inspection.
- b. The consignee has the right to reject the goods on receipt during the final inspection on delivery even though the goods have already been inspected and cleared at the pre-dispatch stage by Procuring Entity's inspector. However, such rejection should be strictly within the contractual terms and conditions and no new condition should be adopted while rejecting the goods during final inspection.
- c. Goods accepted by the purchaser at the initial and final inspections, in terms of the contract, shall in no way dilute the purchaser's right to reject them later, if found deficient in terms of the warranty clause of the contract.
- d. In case of rejection of goods at this stage, the material rejection advice/ rejection memo should be issued. In case of pre-inspected goods, a joint inspection of the

rejected lot of goods should be held with the pre-inspecting agency and firm. In case of failure of the firm to associate with a joint inspection, it should be held with the pre-inspecting agency.

- e. In case of rejection of the pre-inspected supply of goods at the consignee end, the material rejection advice/rejection memo should be sent to all concerned, which is, the firm, purchaser, pre-inspecting agency, paying authority, associate bill paying authority, and so on, without fail. The concerned paying authority as per the contract and associate bill paying authority should note the rejection advice details in its recovery register for effecting recovery of payments made, as the case may be. In case of replacement supply against the rejected lot of goods, the process should remain exactly the same in terms of sequence of pre-inspection/inspection as laid down in the contract, prior to acceptance by the consignee. In case of acceptance of the replacement supply/rejected supply after rectification, the earlier issued material rejection advice/rejection memo should be withdrawn under advice to all concerned.

(iii) **Manufacturer's Quality Self-certification**

- a. Reputed manufacturers could be relied upon with respect to certain goods for quality products. These may not be subjected to physical inspection and the materials may be accepted under the firm's quality self-certification. The physical inspection clause stipulating the inspection authority and inspecting officer in such cases should not be included in the contracts entered into. Waiver of pre-dispatch inspection and acceptance of materials under the firm's quality self-certification may be considered where:
 - 1. The user Departments indicate, in their indent, that physical inspection is not necessary and that the materials can be accepted on the firm's quality self-certification;
 - 2. The user Department requests for a waiver of inspection to meet urgent requirement and where the firm is agreeable to 100 (Hundred) per cent payment against the consignee's receipt and acceptance. In such cases, the user Departments themselves should be responsible for ensuring the quality of goods supplied;
 - 3. In case of goods to be imported from abroad, pre-dispatch inspection of goods at the supplier's premises involves considerable expenditure to the purchaser. In such a situation, the purchaser may substitute pre-dispatch inspection by its own inspector with manufacturer's in-house inspection report and warranty. However, before adopting this procedure, the nature and cost of the goods ordered, the reputation of the supplier, and so on, should also be kept in view and appropriate decision taken. For checking the reputation and background of the supplier, the purchase organisation may also request the Indian embassy located in that country for a report on the technical and financial competence of the firm. Further, trustworthy publications such as Thomas Register, Dun and Brad Street Register, and so on, are also available in the USA and Europe which provide authentic technical and financial data and

details of the manufacturing companies located in those countries. Such publications may also be relied upon for this purpose; and

4. However, the right of waiver of inspection may be reserved only for specific requirements. Justification for the waiver should be recorded. Also, a suitable clause may be incorporated in the conditions of contract.

(iv) **Inspection on Installation and Commissioning**

This method is adopted to check the performance and output of equipment or machinery after it is commissioned and operational at site.

9.12.2 Types of Inspection Agencies

Normally, inspection modalities or agencies for inspections specified in the contract should not be changed. In rare cases, when this becomes inescapable, it should be done with the approval of the CA, justifying the rare circumstances, ensuring that no undue benefit accrues to the contractor.

- (i) **Internal Inspection Authorities:** Wherever there is technical expertise available in-house, an internal officer of the Indenting Department is nominated for inspection. The consignee should be the final authority for acceptance of goods.
- (ii) **External Inspecting Authorities:** In case Procuring Entity does not have technical expertise or for other relevant reasons, inspection may also be entrusted to a third-party inspection authority. The Procuring Entity, however, retains the right to reject the consignment, even if it is cleared by third party inspection authorities.
- (iii) **Joint Inspection on Complaint:** In case a written complaint is received from the supplier disputing the rejection of goods by the Procuring Entity's inspecting officer, it should be jointly investigated by a team consisting of an authorised representative of the Procuring Entity, a senior representative of the inspecting agency who is conversant with the goods and an authorised representative of the supplier⁹⁶.

9.12.3 Issue of Inspection Report

After satisfactory inspection and tests, the acceptable goods shall be stamped, labelled, marked or sealed, in such a way as to make subsequent identification and tally with the inspection report of accepted lots easy for the consignee/user.

- (i) Each inspecting officer shall be supplied with acceptance stamps, lead seals, pliers, rubber stamps, stencils, labels, stickers, holograms, and so on, according to requirements, for sealing and marking the inspected goods in terms of the contract. He will be responsible for safekeeping of these articles and shall ensure that they are not misused by unauthorised persons. Unserviceable seals, pliers, stamps, stickers, holograms, and so on, shall be returned to the concerned issuing official. The procuring entity shall lay down detailed guidelines covering all these aspects. For reasons of security and to avoid irregular or incorrect issue, inspection notebooks should be machine numbered and, wherever possible, different coloured copies marked for each user. An

⁹⁶Railway Board Letter No.2000/RS(G)/379/2 dated 07.08.2015.

account of the inspection notes issued with serial number-wise details shall be maintained in an appropriate register. Procuring Entity should also develop a fool proof system to avoid any fraudulent and unauthorised use of the inspection notes;

- (ii) There should not be any initial provisional acceptance at a lower level. A time limit shall be fixed for the issue of inspection documents. The inspection note shall also indicate the validity period, by which period the supplier must dispatch the accepted goods to the consignee in terms of the contract. The number of copies of the inspection notes and their distribution for different types of inspections will be as prescribed by the procuring entity/indenter Department;
- (iii) Inspection reports should be prepared detailing the inspection done, samples examined, requirements as per the relevant specification/contract and the observations jointly with the representative of the firm. Each inspection note copy issued should invariably bear the individual's name, stamp along with his designation and code number of the officer authorised to sign and issue inspection documents. Facsimiles of the inspection stamps and their position should be put on the inspected material to help identify the inspected goods at the consignee's end. Inspection note copies meant for payments should be attested with full signature in ink by the inspecting officer. The Finance Department will make payments only against copies so attested, not against any other copy. Corrections, if any, on the inspection note should be duly authenticated by the officer issuing it. Similarly, each continuation sheet, if attached to the inspection note, should be signed by the inspecting officer at the relevant places and any correction duly authenticated;
- (iv) Departmental instructions should invariably prescribe that paying authorities will keep a record of specimen signatures of authorised inspecting authorities for verification with the signature in the inspection note while authorising payment;
- (v) A separate inspection report must be prepared for each consignment. In the case of large consignments, the issue of the inspection report may not be held up until the inspection of the full consignment is completed. These must be issued for lots inspected every day or every two days. If the contract is in terms of 'sets' or 'number' and materials are such that they comprise a number of components or accessories, the inspection report should be issued only when all parts, components and accessories forming a set are inspected and accepted. When plant and equipment are ordered with spares, the inspection report for spares should not be issued before acceptance of the main equipment. In the case of contracts for imported materials that involve initial inspection in the country of origin and final inspection in India, the final inspection note should be issued giving reference of the certificate issued abroad;
- (vi) In respect of materials which have been rejected by the inspecting officer, the rejection inspection report should be issued immediately following the completion of inspection. In case of total rejections, no copies meant for payments or the accounts office should be issued. All the reasons for rejection and deviations against the governing specifications, drawings or other particulars should invariably be noted in detail in the "remarks" column of the rejection inspection note. The rejected material should be given a yellow paint mark to avoid it being submitted again for inspection or supplied to other customers. Such copies should be cancelled across by the inspecting officer with his signature and retained in the inspection file along with the office copy of the rejection inspection note; and

- (vii) No 'certified true copy' of the lost original payment copies should be issued until a 'non-payment certificate' has been received from the accounts officer concerned or stating that payment has not been made and should not be made against the original inspection report even if received subsequently. This copy must be endorsed as "certified copy". This endorsement should be attested in full in indelible ink by the officer proving a cross reference to the accounts officer's non-payment certificate with the name stamp with the designation and code number of the officer issuing the duplicate copy.

9.12.4 Material put up for Inspection towards the End of Delivery

- (i) As far as possible, the inspection should be commenced and finished and the inspection report issued during the validity period of the contract. In cases where the supplier offers materials for inspection during the last few days of the contract delivery period or even on the last day of the contract delivery period, efforts should be made by the inspecting officer to commence the inspection before the expiry of the delivery period.
- (ii) In cases where it is not possible to commence or conclude the inspection before the expiry of the delivery period, the inspecting officer should, immediately, on receipt of the intimation or request for inspection of the materials, bring this to the notice of the supplier orally as well as in writing. The inspector must mention that the materials have been submitted for inspection at a very late stage and that it is not possible to commence/conclude the inspection before the expiry of the delivery period.
- (iii) The supplier should also be informed that the goods offered for inspection should, however, be inspected until the completion of the inspection which can be after the expiry of the delivery period and that such an inspection continuing after the expiry of the delivery period is neither intended nor to be construed as condoning the delay or keeping the contract alive.
- (iv) In such cases, the inspection note, whether accepting or rejecting the goods, should be duly franked as per the franking clause given below:
 - a. **Franking Clause on Acceptance and Rejection:** This clause may also be incorporated in conditions of the contract.
"The issue of this inspection/rejection report 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. The goods are being passed/ rejected without prejudice to the rights of the Purchaser under the terms and conditions of the contract."
- (v) The consignee should inspect material within reasonable time (both pre-inspected/ consignee inspected) and certify the bills or inspection notes immediately thereafter.
- (vi) The material received should be checked for its correctness of PO No., Description & specification, quantity, Consignee, Quality etc. in case of Consignee inspection. Further, in case of Pre-inspected items, the materials are also checked for the correctness of RITES/RDSO Holograms available on the materials w.r.t Inspection Certificate.
- (vii) The consignee at discretion may send the material for testing to any other Govt. testing agencies to test the materials w.r.t the parameters of the Specification as mentioned

in the PO. If the material is failed in the Lab test, then the material will be rejected. Rejection memo will be prepared duly indicating the reasons for Rejection and will be advised to firm for replacement of the same. In case of rejection of pre-inspected material the Rejection Memo should be sent to the Inspection Agency. The Consignee shall arrange for joint inspection and the report of the joint inspection is binding for all the parties.

- (viii) Rejected stores should be removed to a place set apart for the purpose to avoid any possibility of their getting mixed up with other stores. The Rejected Stores will be in the Warehouse premises at risk and cost of the firm. The firm should remove the Rejected Material within 21 days from the date of Rejection Memo issued. Ground Rent is the penalty levied on the unremoved Rejected stores lying in the custody of the stores depot. In case of non-advance payment cases the rejected stores can be returned subject to payment of Ground Rent charges, Test Charges, Incidental charges as per the provisions and in case of advance payment cases, it should be ensured that the payment made shall be recovered.
- (ix) Procedure to be followed for Rejection of materials by consignee and for its Clearance⁹⁷⁹⁸:
- a. In case of rejection of pre-inspected materials at Consignee end, Rejection memo should be sent to all concerned i.e., Firm, Purchaser, Pre-inspecting Agency, Paying Authority as per the contract, Associate Bill Paying Authority etc. without fail.
 - b. The concerned Paying Authority as per contract and Associate Bill paying authority should note the rejection advice details in the recovery register for effecting recovery of payments made, as the case may be.
 - c. Joint inspection of rejected lot of goods should be held with pre-inspecting agency and firm. In case of failure of the firm to associate with joint inspection the same should be held with pre-inspecting agency. The decision taken during the Joint inspection will be final and abiding by all the parties.
 - d. Firm may be permitted to rectify the rejected goods in its premises, only after the firm has deposited the payments already made against the same or equivalent amount has been withheld for this purpose provided the contract is alive.
 - e. In case of replacement of supply against rejected goods, the same should be pre-inspected by pre-inspecting agency prior to acceptance of the same by the consignee and the contracts shall be current and valid.
 - f. In case of acceptance of replacement supply/rejected supply after rectification, the material rejection memo issued earlier should be withdrawn under advice to all concerned.

⁹⁷ Joint Inspection- Railway Board Letter No.2000/RS(G)/379/2 dated 07.08.2015.

⁹⁸In case of Warranty Failures, the procedure may be followed as per Railway Board Letter No. 2000/RS(G)/379/2 dated 7/8/2015 & 18/1/18.

9.12.5 Acceptance of excess / short supply by the Consignee without formal amendment to the contract

The consignee should accept delivery in short or in excess as per the condition of the tender. This type of cases may happen in case of OFC and duct.

Chapter 10: Types of Contracts

10.1 Rate Contracts

- (i) A Rate Contract (commonly known as RC) is an agreement between the purchaser and the supplier for supply of specified goods (and allied services, if any) at specified price and terms & conditions (as incorporated in the agreement) during the period covered by the Rate Contract. No quantity is mentioned nor is any minimum drawal guaranteed in the Rate Contract. The Rate Contract is in the nature of a standing offer from the supplier firm. The firm and/or the purchaser are entitled to withdraw/cancel the Rate Contract by serving an appropriate notice on each other giving 15 (fifteen) days time. However, once a supply order is placed on the supplier for supply of a definite quantity in terms of the rate contract during the validity period of the rate contract, that supply order becomes a valid and binding contract. In view of Government e Marketplace coming into operation, Rate Contract will be applicable for specialized and engineering items.
- (ii) **Fall Clause⁹⁹**
- a. Fall Clause shall be applicable only to Rate Contracts and shall not be applicable to Fixed Quantity Contracts including Running Contracts.
 - b. Fall Clause to be deleted from the contract. Fall Clause shall not be included in tenders/contracts for Fixed Quantity Contracts including Running Contracts.
 - c. For the purpose of making it applicable to Rate Contracts, the same is to be included in the Special Conditions of contract. Text of Fall Clause to be followed in rate contracts should be in similar lines as given in para (iii) below.
- (iii) **Text of Fall Clause**
- a. The price charged for the stores supplied under the Contract by the contractor shall in no event exceed the lowest price at which the contractor sells the stores or offer to sell stores of identical description to any persons/organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway undertaking, as the case may be, during currency of the contract. The lower price will be applicable to supplies made after the date of coming into force of such reduction or sale or offer to sell at a reduced rate
 - b. If at any time during the said period the contractor reduces the sale price, sells or offers to sell such stores to any persons, organizations including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be at a price lower than the price chargeable under the contract, they shall forthwith notify such reduction or sale or offer of sale to the purchaser and the price payable under the contract for the stores supplied after the date of coming into force of such reduction or sale or offer of sale, shall stand correspondingly reduced.

⁹⁹ Notified vide OM No. 2022/RS(G)/779/2 issued by Railway Board, Ministry of Railways dated 14.02.2022

- c. The Contractor shall furnish the following certificate to the concerned Accounts Officer along with each bill for payment of supplies made against the contract.

“I/We certify that there has been no reduction in sale price of the stores of description identical to the stores supplied to the Government under the contract herein and such stores have not been offered / sold by me/us to any person / organization including the purchaser or any Department of Central Government or any Railway Office or any Railway Undertaking as the case may be, up to the date of bill, at a price lower than the price charged to the Government under the contract.”

- (iv) In all transmission equipment (DWDM/SDH/PTN/MPLS) which are deployed in the RailTel's network, the RC should be used for¹⁰⁰:
 - a. Business delivery purposes.
 - b. Wherever network is considered reasonable to be established in very small sections and 2-3 new nodes need to be inserted in between already existing network on both sides, to achieve ring protection, route redundancy etc.
 - c. Conversion of intermediate node from ILA to OADM or similar based on reasonable justification.
 - d. Creation of new node in already existing network based on reasonable justification.
 - e. Any other instances considered appropriate by concerned Region with the approval of concerned director.

Note: Open tenders should be invited for new full length routes requiring:

1. Either up-gradation of network e.g. from 10G to 100G
2. First time establishing SDH/DWDM/IP network in cases like taking over a new section from Railway or in access network [with exception of para (iv) (b) above].

10.2 Annual Maintenance Contract (AMC)

- (i) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble-free service. For this purpose, RailTel may enter into a maintenance contract. It must, however, be kept in mind that maintenance contract is to start after the expiry of the warranty period, during which period the goods are to be maintained free of cost by the supplier;
- (ii) If the maintenance contract is to be entered into with the supplier of the goods or its authorize partner/distributor, then suitable clauses for this purpose are to be incorporated in the tender enquiry document itself and while evaluating the offers, the cost component towards maintenance of the goods for specified number of years is also to be added in the evaluated tender value on overall basis to decide the inter se ranking of the responsive tenderers. Equipment with a lower quoted price may carry a higher maintenance liability. Therefore, the total cost on purchase and maintenance of the equipment over the period of the maintenance contract should be assessed to

¹⁰⁰ RailTel's letter No. RCIL-CO00P(PROC)/2/2021-O/o ED/Operations/CO/RCIL (13168) dated 09.08.2021

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

- (iii) The details of the services required for maintenance of the goods, the required period of maintenance and other relevant terms and conditions, including payment terms, are to be incorporated in the tender enquiry document. The terms of payment for the maintenance service will depend on the nature of the goods to be maintained as well as the nature of the services desired. Generally, payment for maintenance is made on a half-yearly or quarterly basis;
- (iv) A Service Level Agreement (SLA) may be incorporated in complex and large maintenance contracts. SLA should indicate guaranteed levels of service parameters like - %age uptime to be ensured; Performance output levels to be ensured from the equipment; channel of registering service request; response time for resolving the request, Channel for escalation of service request in case of delay or unsatisfactory resolution of request, monitoring of Service Levels etc. This would include provision of help lines, complaint registration and escalation procedures, response time, percentage of uptime and availability of equipment, non-degradation in performance levels after maintenance, maintenance of an inventory of common spares, use of genuine spares, and so on. The maintenance contract may also include penalties (liquidated Damages) for unacceptable delays in responses and degradation in performance output of machines, including provisions for terminations;
- (v) It should be indicated in the bid documents, whether the maintenance charges would be inclusive of visiting charges, price of spares (many times, consumables such as rubber gasket, bulbs, and so on, are not included, even though major parts may be included), price of consumables (fuel, lubricants, cartridges, and so on). If costs of spares are to be borne by the Procuring Entity, then a guaranteed price list should be asked for along with the bids. It should also be clarified, whether room/space, electricity, water connection, and so on, would be provided free of cost to the contractor. The bidding document should also lay down a service level agreement to ensure proper service during the maintenance period;
- (vi) Sometimes, during the tenure of a maintenance contract, especially with a longer tenure, it may become necessary for the purchase organisation to withdraw the maintenance contract due to some unforeseen reasons. To take care of this, there should be a suitable provision in the tender document and in the resultant contract. Depending on the cost and nature of the goods to be maintained, a suitable notice period (say one to three months) for such cancellation to come into effect is to be provided in the documents. A model clause to this effect is provided below:
- (vii) "The purchaser reserves its right to terminate the maintenance contract at any time after giving due notice without assigning any reason. The contractor will not be entitled to claim any compensation against such termination. However, while terminating the contract, if any payment is due to the contractor for maintenance services already

performed in terms of the contract, these would be paid to it/him as per the contract terms".

- (viii) *A format for Long Term Maintenance Contract/ AMC by OEM is placed at Annexure-16.*
- (ix) *The contractor will inform to RailTel in writing and ask for the AMC LOA six months prior to expiry of warranty period. In case issue of LOA for AMC is delayed due to non-intimation by the contractor, he/she will extend the original PBG till issue of LOA for AMC and submission of PBG else original PBG will be encashed.*

Authority: Rule 169 of GFR 2017

10.3 Long term Contracts

The long term contract is for a period of 3 Years.

- (i) Successful bidder against the tender will not be allowed to bid in the procurement process for other tenders (including developmental tenders) of the organization for this particular item during the period that the long term contract against this tender is in force.
- (ii) The requirement of Second Year will continue to be met from the same supplier unless the supplier defaults on the Quality/Delivery.
- (iii) The requirements for the consignee can be covered through one or more Supply Orders/Purchase Orders within the overall Ceiling of total quantity contracted for the consignee.
- (iv) Prices will be guided by PVC formula as indicated in the tender schedule. Any offer with deviation in respect of the PVC formula or base date or basic price will be summarily rejected.
- (v) No increase in price will be permitted except based on PVC. However statutory variation where ever applicable will be allowed within the original contract period against document period.
- (vi) Since the long-term contract is an assured cash flow to the Vendor on a longer-term horizon, it is expected this will bring in price of the item vis-a-vis what is obtained in one year contracting. In case the price advantage is not evident from the offers received, Organization reserves the right to take suitable decision accordingly.

Note: The detailed guidelines for Long Term Contract items are available in the following Railways Board's Circulars present in the footnote¹⁰¹¹⁰²¹⁰³.

¹⁰¹ Railway Board Letter No.2010/RS(G)/779/9 dated 03.07.2018

¹⁰² Railway Board Letter No.2010/RS(G)/779/9 dated 08.01.2016

¹⁰³ Railway Board Letter No.2010/RS(G)/779/9 dated 07.06.2017

Chapter 11: RailTel's Scrap Disposal Policy¹⁰⁴

11.1 Scrap for Disposal

- (i) There accumulates, in every organisation, a large quantity of material which is neither usable for the purpose for which it was originally procured nor of any other operational value. Such material is generally called "scrap" and should be distinguished from other stores and component parts which can be utilised after repair or renovation. Occasionally, scrap may consist of second-hand or in excellent repair even new material which is surplus to the need of the organisation or its sister organisations and may command a fair price in the market not normally associated with scrap.
- (ii) Scrap can be defined as the waste that has no economic value for the organization. Scarp can also be defined as the material, which is no longer useful to the organization for the purpose for which it was originally purchased or acquired.
- (iii) Scrap is a class by itself, and should be distinguished from surplus stores. These are items which are not useful for the organization for their own use and are invariably disposed of by auction, sale or any other means. Even new or second hand material that is no longer usable, may come in the category of scarp.

11.2 Reasons for Scrap Arising

- (i) The asset has served its normal life as stipulated by RailTel's CO letter dated 21/06/2012 and there are frequent faults and incurring of disproportionate amount on maintenance etc.
- (ii) Due to technological obsolescence- the asset may not be compatible/ efficient or outdated and not usable in present circumstances.
- (iii) Replacing existing equipment by advanced and higher capacity to meet the demand growth.
- (iv) The aggregate cost incurred on repair of defective asset/equipment has reached a stage beyond which it is not considered desirable to run the asset economically.
- (v) By use, various components are worn out to such a condition that they can't be reconditioned economically or are beyond repair.
- (vi) Asset I material or any part/ component thereof are not re-useable elsewhere.

11.3 Declaration of Unserviceable/Scrap

All assets /materials other than waste and unusable Assets/ materials, being classified as scrap have to be first declared unserviceable by the competent authority. The assets/materials may be classified as unserviceable based upon the recommendations of the Survey committee.

11.4 Survey committees

Before any asset/ material are declared unserviceable/scrap, a survey committee will be constituted by the ED/RGM of the Region or by the Corporate Office in case the asset relates

¹⁰⁴ RailTel's letter No. RailTel/Operations/Report/2012-13/Scrap disposal dated 25.02.2014

to CO. The constitution of survey committee will be as per the RailTel's SOP for scrapping of assets in cases where "asset/material has reached its expiry of useful life" or "has prematurely reached its expiry of useful life". Survey committee normally comprises of officers from various wings of the organization i.e. one from the user department, one technical member who have proficiency for the technology for the asset to be scraped and one member from finance. In case special expertise is not available in the organization with respect of asset, proposed to be scraped (such as Motor Vehicle, DG set etc.), an expert member from outside may be opted in the committee. The committee shall review the scrap position at an interval of every six months (i.e twice in a year). The Survey committee should critically examine the asset offered to them for scrapping, by highlighting the following points:

- (i) **In case the asset has completed the useful life fixed by RailTel CO:** After completion of prescribed normal life, if the asset is no longer useful or the asset has completed more than 90% of its useful life fixed by the company (except the assets which have useful life upto 3 years) and the asset is no longer useful, the survey committee can give its recommendations for scrapping the assets on the following grounds:
 - a. That the asset has completed its prescribed life and has started showing deteriorating performance.
 - b. Aggregate cost incurred on has reached a stage beyond which it is not considered desirable to incur more expenditure on its maintenance to run the equipment economically.
- (ii) **In case of Premature scrapping of Asset/ materials:** In case useful life of the asset is not completed but the asset is no longer useful for the company, the asset may be referred to the Survey committee for scrapping on the following grounds:
 - a. Obsolete asset /material which are no more useful and has deteriorated in value/performance for any reason.
 - b. Broken, damaged due to fire or damaged in transit, or while in stock.
 - c. Lying in asset for a long time and declared as obsolete and unserviceable.
 - d. In case of premature scrapping, reason and justification of scrapping must be given by the survey committee.
 - e. In case the asset has completed more than 90% of its useful life fixed by RailTel CO (except the assets which have useful life upto 3 years), it will not be treated as premature for scrapping, in case it is considered by survey committee for scrapping.

11.4.1 For OFC

- (i) The no. of joints in a given length of OFC is more than prescribed limit.
- (ii) The loss in signal strength over a given length of the OFC is more than prescribed limit
- (iii) The loss in signal strength can't be restored by any means by using of amplifiers etc. economically.
- (iv) Any other parameters prescribed

11.4.2 For Equipment

- (i) In case of premature scrapping, full justification for scrapping may be given by the

committee.

- (ii) Whether the frequent failure/fault is such that it is not considered capable of giving satisfactory service even after incurring reasonable expenditure on the rectification of defects.
- (iii) Whether the aggregate cost incurred on replacement and repair of the defective components has reached at a stage beyond which it is not considered desirable to run the asset economically.
- (iv) Whether any components are considered good and can be recovered and used elsewhere.
- (v) Survey committee must ensure that any asset which has exchange value must be replaced by exchanging the same at best negotiated rates (item such as batteries, DG set, ACs etc can be replaced through exchange offer).

11.4.3 Recommendation on Anticipated Sale Price

- (i) The survey committee after careful examination of the condition of scrap and with due consideration of the prevailing market price must mention in its report the anticipated sale price of the scrap. Based on the anticipated sale price of scrap the process of disposal may be processed by the scrap disposal committee.
- (ii) Survey committee should broadly examine all the aspects and submit their recommendations for acceptance/modification/rejection to the Competent Authority. The Proforma for recommendation of the Survey committee is placed at Annexure-17. The recommendations given by Survey Committee will be submitted to the Accepting Authority for accepting the report. After acceptance of the report it will be forwarded for disposal to the committee as per the SOP for Scrap Disposal referred under para 11.4 above.

11.4.4 Obsolete/ Unserviceable Stores

All stores which are declared as obsolete or unserviceable may be ordered to be disposed of by sale or otherwise under orders of an authority to whom powers may be delegated in this behalf. The survey committee may be constituted for scrapping the store materials as referred under para 11.4 above, for declaring the stores as Obsolete/ Unserviceable. The survey committee should also ensure that the existing store proposed to be considered as obsolete or unserviceable is not re-useable elsewhere.

11.5 Procedure for Disposal of Scrap

11.5.1 Sale of Scrap

- (i) After approval of the Survey committee report by the competent authority, the scrap may be disposed of by inviting the concerned auctioneers dealing with that particular scrap. There are different auctioneers dealing with different types of scrap such as telecom cards, iron, wood, telecom equipment, cable etc. No lot should be made by bringing the entire scrap at any single place for sale of scrap.
- (ii) For disposal of scrap items like furniture, computers, UPS, packing materials etc preference should be given to the RailTel staff; where in sealed quotations from willing staff may be invited for disposal of these items.

- (iii) The Lot formation for sale of scrap must be scientific.
- (iv) The defective/ scrap material should be available at nominated place in field, generally the Headquarter of O&M In charge in Division / Territory. If the cost of aggregating the material appears to be more than the cost that could be realized through disposal, it should be disposed on “as is where is basis”.

11.5.2 General Condition for Sale of Scrap

- (i) The scrap asset/materials should be lifted by the successful scrap dealer after dismantling/recovery as the case may be from the places where the asset/material is lying on “as is where is” basis.
- (ii) **Inspection:** The intending scrap dealer can inspect the scrap well in advance in the presence of the unit officer concerned and assess/satisfy himself regarding its condition, if required and felt necessary by scrap dealer. All the scrap materials are offered on “AS IS WHERE IS” BASIS. The quantities mentioned against the lots are purely indicative and without any guarantee and no complaint whatsoever regarding conditions/deficiencies of the scrap asset / material will be entertained at any stage as the case may be. Full responsibility lies with the successful scrap dealer to pay the agreed amount in time and lift the scrap material without delay. Scrap dealer shall quote for the whole lot and not part thereof.
- (iii) The asset/ store so declared scrap will be disposed off as per the SOP for Scrap disposal, depending upon the anticipated scrap value (say upto Rs. 5 lacs, through Asst. GM/ Sr. Manager level committee; More than Rs. 5 lacs, through Addl. GM/ DGM level committee. The Evaluation committee will have three members with one from Technical, one from Finance and one from User department. Finance member may be one level below.
- (iv) EMD may be accepted for sale of scrap for the modes of sale mentioned above.
- (v) **Mode of Payment for Sale of Scrap:** The successful scrap dealer shall pay the amount agreed in full along with applicable GST value (on 100% of the scarp material value) within 15 calendar days from the date of issue of acceptance letter by Demand Draft (in favour of RailTel Corporation of India Limited, New Delhi) or through online payment in the form of NEFT/RTGS as applicable. No cash may be accepted for sale of scrap.
- (vi) **Default in Payment:** In case of default on payment within the time limits specified, the payment has to be made together with additional charge @ 1% per week or part thereof on the due amount for the period of delay within 14 calendar days from the due date. However, RailTel reserves the right to accept or not to accept the payment with or without additional charges after the expiry of the time limit of 15 calendar days from the date of issue of acceptance letter or even within the aforesaid additional period of 14 calendar days at RailTel’s sole discretion. The EMD of the tenderer will automatically stand forfeited and the decision of RailTel in this regard shall be final and binding on the scrap dealer.
- (vii) **Security Deposit:** In case the scrap dealer(s) be accepted as per the terms and conditions, the EMD deposited by the successful scrap dealer(s) shall be automatically converted into Security Deposit while issuing Sale Acceptance Letter. In case the rates quoted by scrap dealer is accepted and the scrap dealer fails(s) to make further financial arrangements towards the full value of the scrap materials and/or taxes/duties and/or any other financial arrangements are stipulated, the Security Deposit obtained on conversion

of EMD shall be forfeited without any prejudice to the rights of RailTel to claim such further damages in this regard without further reference to the scrap dealer.

- (viii) **Delivery Period:** The scrap material should be lifted by the scrap dealer within 15 (fifteen) calendar days from the date of Delivery Order after completing the required formalities i.e., from the date of payment to the date of lifting the scrap material lies with the successful scrap dealer. However, the period can be extended at the discretion of RailTel depending upon the situation/circumstances. Any scrap dealer who fails to lift the scrap materials fully or partly of the materials within the above stipulated period shall have to pay ground rent @ 2% per week or part thereof for a maximum period of further 2 (Two) weeks from the date of expiry of free delivery time as stipulated. In case the whole or any part of the scrap materials remains unlifted even after the said extended period, the scrap dealer shall have no claim whatsoever on the scrap materials remaining un-lifted and the amount paid to the RailTel will be forfeited apart from the rights of RailTel to dispose of such goods in any manner it likes and the scrap dealer will have no right whatsoever to any compensations and the decision of RailTel in this regard shall be final and binding up on the scrap dealer.
- (ix) **Termination of Contract/Risk Purchase:** In the event of scrap dealer's failure to fulfill any of the required obligation including non-lifting of scrap materials as per time prescribed, RailTel decision in regard to scrap dealer's failure being final and binding on the scrap dealer. RailTel shall have the full liberty to do any or all of the following:
- a. Cancel the deal with immediate effect for the Disposal of scrap Telecom Store Materials under the deal agreed if delivery is not taken by the scrap dealer as on that date in which case, the Security Deposit/ Earnest Money Deposit (as the case may be) shall stand forfeited; and/or
 - b. Retain and/or adjust/recover from scrap dealer and amount lying with RailTel to the scrap dealer's credit either under this contract or any other deal or which may at any time become payable/refundable to scrap dealer under this deal or any other deal/contract the amount of losses or damages or claim that might be incurred by RailTel selling the scrap Telecom Store Materials under the deal not taken delivery of at scrap dealer's risk and costs.
- (x) Even after such recovery/adjustment by RailTel from scrap dealer's any amount as mentioned above lying with RailTel, if any further amount is still found payable/refundable by the scrap dealer, he shall pay the same to RailTel on demand without any objection or demur. The decision of RailTel in this regard to the actual losses incurred by RailTel including the reasonableness of the rate at which RailTel may sell the scrap telecom store material shall be final and binding on the scrap dealer, provided if no loss is incurred by RailTel. The scrap dealer shall not be entitled to the refund of the amount retained by way of advance towards the unlifted stores and the decision of RailTel in this regard shall be final and binding up on the scrap dealer(s)

11.6 SOP¹⁰⁵ for Disposal of Scrap

Based on the anticipated scrap value recommended by the Survey Committee and approved by the competent authority as per SOP, the ED/RGM of region should decide based upon the recommendation of the Scrap Disposal Committee as per SOP as the mode of sale of the same, such as by Spot Bid Sale, calling quotations, sealed bids, e-auction (including through GeM), Live Auction, or any other method to get the best price for sale of the scrap.

¹⁰⁵ The SOPs for Scrap Disposal are mentioned under Annexure-A of the RailTel letter No. RailTel/Operations/Report/2012-13/Scrap disposal dated 25.02.2014. The same may be referred and if deemed fit, may be revised.

Chapter 12: Legal Aspects of Public Procurement

12.1 Relevant Provisions of the Constitution of India

12.1.1 Equality for Bidders

Article 19 (1) (g) of the Constitution of India (under Part III – ‘Fundamental Rights’) grants all its citizens the right “to practice any profession or to carry out any occupation, trade or business”. This has been interpreted by courts in a way so as to ensure that every citizen of India has a right to get equal opportunity to bid for and be considered for a public procurement contract. However, this provision does permit stipulation of reasonable eligibility or pre-qualification criteria for the selection of successful bidders in a public procurement contract. Thus, a public procurement organisation should be ready to prove in court that no eligible bidder has been denied reasonable and equal opportunity under this article to bid and be considered for the concerned contract.

12.1.2 Persons Authorized to Make and Execute Contracts on Behalf of Governments

As per Article 299 (Part XII – Finance, Property, Contracts and Suits) of the Constitution of India, all contracts on behalf of the Union Government or state Governments are to be entered into and executed by authorised persons on behalf of the President of India or Governor of the state, respectively. The President of India, Governor of the state and the authorised persons who enter into or execute such contracts are granted immunity from personal liability under this article. The officer who is authorized by RailTel can execute all contracts on behalf of RailTel Corporation of India Ltd. Officer should sign above on his name and writing below “For and on behalf of RailTel Corporation of India Ltd.”

12.2 Other Mercantile Laws

A procurement contract besides being a commercial transaction is also a legal transaction. There are a number of commercial/mercantile laws that are applicable equally to the private sector and public procurement, such as the Indian Contract Act, Sales of Goods Act, Arbitration and Conciliation Act, and so on. Although a public procurement professional is expected to have a working knowledge of the following basic laws relating to procurement, yet he is not expected to be a legal expert. If standard contract forms are used, the procurement official can discharge his normal functions without frequent legal help. In case any complex legal issue arises, or a complex contract beyond the standard contract form is to be drafted, an appropriate legal professional may be associated with the procurement from an early stage. Salient features of these mercantile laws relating to Procurement are summarized below.

12.2.1 Legal Aspects Governing Public Procurement of Goods - Introduction

A public procurement contract, besides being a commercial transaction, is also a legal transaction. There are a number of laws that may affect various commercial aspects of public procurement contracts. A public procurement professional is expected to be generally aware of the implications of following basic laws affecting procurement of goods; however, he or she is not expected to be a legal expert. Where appropriate in complex cases, legal advice may be obtained. In other categories of procurement, additional set of laws may be relevant:

- (i) The Constitution of India;
- (ii) Indian Contracts Act, 1872;

- (iii) Sale of Goods Act, 1930;
- (iv) Arbitration and Conciliation Act, 1996 read with the Arbitration and Conciliation (Amendment) Act, 2015 and 2021;
- (v) Competition Act, 2002 as amended with Competition (Amendment) Act, 2007;
- (vi) Micro, Small and Medium Enterprises Development (MSME Development) Act, 2006;
- (vii) Information Technology Act, 2000 (IT Act, regarding e-Procurement and e-auction, popularly called the Cyber Law) with amendments carried out in 2008;
- (viii) Right to Information (RTI) Act 2005;
- (ix) Central Vigilance Commission Act, 2003;
- (x) Delhi Special Police Establishment Act, 1946 (basis of the Central Bureau of Investigation);
- (xi) Prevention of Corruption Act, 1988;
- (xii) GST Act, 2017
- (xiii) Digital Personal Data Protection Act, 2023

The elements and principles of contract law and the meaning and import of various legal terms used in connection with the contracts are available in the Indian Contract Act, 1872 read with the Sale of Goods Act, 1930. The Concerned Purchase Officials can peruse these Acts from the respective official websites.

12.3 Updation of Labour data on Railway's Shramikkalyan Portal

- (i) Contractor is to abide by the provisions of Payment of Wages Act & Minimum Wages Act in terms of clause 54 and 55 of Indian Railways General Condition of Contract. In order to ensure the same, an application has been developed and hosted on website 'www.shramikkalyan.indianrailways.gov.in'. Contractor shall register his firm/company etc. and upload requisite details of labour and their payment in this portal. These details shall be available in public domain. The Registration/updation of Portal shall be done as under:
 - a. Contractor shall apply for one-time registration of his company/firm etc. in the Shramikkalyan portal with requisite details subsequent to issue of Letter of Acceptance. Engineer shall approve the contractor's registration on the portal within 7 days of receipt of such request.
 - b. Contractor once approved by any Engineer, can create password with login ID (PAN No.) for subsequent use of portal for all LOAs issued in his favour.
 - c. The contractor once registered on the portal, shall provide details of his Letter of Acceptance (LoA)/Contract Agreements on shramikkalyan portal within 15 days of issue of any LoA for approval of concerned engineer. Engineer shall update (if required) and approve the details of LoA filled by contractor within 7 days of receipt of such request.
 - d. After approval of LOA by Engineer, contractor shall fill the salient details of contract labours engaged in the contract and ensure updating of each wage payment to them on shramikkalyan portal on monthly basis.

- e. It shall be mandatory upon the contractor to ensure correct and prompt uploading of all salient details of engaged contractual labour & payments made thereof after each wage period.
- (ii) While processing payment of any 'On Account bill' or 'Final bill' or release of 'Advances' or 'Performance Guarantee / Security deposit', contractor shall submit a certificate to the Engineer or Engineer's representatives that "I have uploaded the correct details of contract labours engaged in connection with this contract and payments made to them during the wage period in Railway's Shramikkalyan portal at 'www. _____shramikkalyan.indianrailways.gov.in' till _____Month, _____Year."

Annexures

Annexure-1: Common examples of "Restrictive and discriminatory conditions against the local suppliers" and "Other conditions which make the bid non-compliant to PPP-MII Order"

[Refer para 2.9.4.1 (iv)]

1. Restrictive and discriminatory eligibility criteria/ Tender conditions
 - a. Mandatory Presence in Gartner Magic Quadrant/ Forrester Wave/ IDC/ Frost and Sullivan/ or any other similar foreign body / magazine / rating agency's certification or review or validation in procurement of IT and Telecom Products.
 - b. Mandatory USFDA / European CE or any other similar Foreign Certification without specifying any equivalent Indian Certification as alternative in procurement of Medical Devices.
 - c. Mandatory UL/ CSA Certification or any other similar Foreign Certification without specifying any equivalent Indian Certification as alternative in procurement of Electronic Devices.
 - d. Excessive turnover requirement as a pre-qualifying criteria, not commensurate with financial capacity required for executing the contract i.e. much in excess of Estimated Bid Value.
 - e. Excessive past experience requirement, not commensurate with the proven experience expected from bidder for successful execution of contract.
 - f. Specific experience of supplying to other Nations being sought for e.g. export experience of G8 countries
 - g. Additional requirement of Bank Guarantee for local supplier
 - h. Delayed Payment Terms for local suppliers
2. Restrictive and discriminatory technical specifications - Foreign brands specified either for finished products or for part of scope of work/ component of scope of supply such as:
 - a. CISCO, NEC, Alcatel, Siemens being asked in Telecom Products
 - b. HP, Dell, Lenovo being asked in IT products
 - c. OTIS, Mitsubishi, Schindler, Kone, Johnson being asked in Lifts
 - d. Siemens, Schneider, GE Power being asked in Electrical Equipment
3. Restrictive and discriminatory technical specifications: Pre-approved foreign brands in works/turnkey projects whereas local manufacturers not included in pre-approved list. Examples of pre-approved brands:
 - a. Cameras- Honeywell, Bosch, Pelco
 - b. Network Switches- D-Link, Cisco, Brocade
 - c. Axial Fan- Kruger, Nicotra, Greenhinch

4. Restrictive discriminatory technical specifications- Foreign technical standards indicated in technical specification. Also, specification tailor made to suit foreign products like:-
 - a. Minus 25-degree temperature compatibility for EPBX equipment being procured for airport in Central India
 - b. Any other similar specification parameter being incorporate to eliminate MII products from competition without any recorded justification of requirement of that specification value for intended end use of the product / service.

5. Other conditions which make the bid non-compliant to PPP-MII Order

Not incorporating suitable clause in the bid documents for giving purchase preference to Class-I local suppliers.

- a. Changing the minimum local content requirement for Class-I or Class-II local supplier without approval of competent authority
- b. Stipulating in the bid document that the particular goods/ works /service category is exempted from the provisions of PPP-MII Order since concerned nodal ministry has not issued any notification for the same. It is clarified that provisions of PPP-MII Order applies on procurement of all categories of goods/ works / service, exceeding Rs. 5.0 Lakh in value. For the items, for which nodal Ministry has not issued any notification default provisions of PPP-MII Order apply.
- c. Not evaluating bidders status (viz. Class-I/ Class-II/ Non-local supplier) during bid evaluation process based upon documents submitted by bidders in their bid/ granting them rights/ privileges as define din PPP-MII Order. Categorizing Class-II local supplier as MII bidder in bid evaluation process and giving them purchase preference is a very common mistake and need to be checked very diligently for proper implementation of the policy.

Annexure-2: Model Clause/ Certificate to be inserted in tenders etc. w.r.t Order (Public Procurement No.4)

[Refer para 2.9.5 (vii)]

(While adhering to the substance of the Order, procuring entities and GeM are free to appropriately modify the wording of the clause/ certificate based on their past experience, local needs etc.)

A. Model Clauses for Tenders (including tenders issued manually or any electronic portal including GeM):

- I. Any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the Competent Authority. *Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, shall also require to be registered with the same competent authority.*
- II. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- III. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order means: -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- IV. The beneficial owner for the purpose of (iii) above will be as under:
 1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation-

- a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;

- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
 2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- V. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- VI. [To be inserted in tenders for Works contracts, including Turnkey contracts] The successful bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority.
- VII. The registration shall be valid at the time of submission of bid and at the time of acceptance of bid.
- VIII. If the bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution

Model Certificate for Tenders:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model Certificate for Tenders for Works involving possibility of sub-contracting:

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Model additional certificate by Bidders in the cases of specified ToT:

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder does not have any ToT arrangement requiring registration with the competent authority. "

OR

"I have read the clause regarding restrictions on procurement from a bidder having Transfer of Technology (ToT) arrangement. I certify that this bidder has valid registration to participate in this procurement. "

B. Model Certificate for GeM (to be taken by the GeM from seller during registration on GeM. GeM should also obtain this certificate from all existing bidders as soon as possible):

"I have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I certify that this vendor/ bidder is not from such a country and does not have any specified Transfer of Technology (ToT) from such a country or, if from such a country or if having specified ToT from such a country has been registered with the Competent Authority. I hereby certify that this vendor/ bidder fulfills all requirements in this regard and is eligible to be considered for procurement on GeM. [Where applicable, evidence of valid registration by the Competent Authority shall be attached.]"

Annexure-3: Format for seeking the approval of the Competent Authority for inviting Global Tender Enquiry for procurements less than Rs. 200 crores

[Refer para 5.3 (iii)]

- (i) Every page should be attested by Administrative Ministry
- (ii) Proposals are to be simultaneously sent to the following:
 - a) Cabinet Secretariat, email: ca4-cabsec@gov.in
 - b) Department of Promotion of Industry & Internal Trade (DPIIT) email: manmeet.nanda@ias.nic.in & rajesh.gupta66@gov.in
 - c) Department of Expenditure, email: kanwal.irss@gov.in and sudesh.kumar85@gov.in

Table-1

S.No.	Particulars	Remarks
1	Name of the Ministry:	
2	Name of the Department:	
3	Name of the sub-ordinate office (if applicable):	
4	Detailed Description of the Item	
5	Use of the Item	
6	Life time of the item proposed (in years)	
7	Whether item is procured regularly? [If so, details of procurement of the said item over the past three years (three completed financial years or last three tenders and the current financial year] inclusive of supply details as per format given under table-2.	
8	Quantity required to be procured with justification for the quantity (States/UT/Region wise projection)	
9	Estimated procurement price along with basic of such estimation (International Price comparison chart)	
10	Justification to be submitted as under	
	a. Detailed justification for Global Tender and essentially of import (item wise)	
	b. Who are the (possible) vendors of the item under procurement, in the global (including India) market?	
	c. Whether the Department has tried and floated the tender to identify the domestic suppliers in the past financial year (If not, the reason thereof)	
	d. Capacity of all domestic local suppliers as per the domestic tender floated, if any	
11	What are technical alternatives available within country and whether they can be used (<i>substituted</i>) for the proposed item under GTE?	
12	Whether the Department had in the past attempted at development of local suppliers/ phased indigenization/ promotion of alternative technology having sufficient local suppliers. (If so, details thereof)	
13	Consequences of non-procurement of the item through GTE.	

S.No.	Particulars	Remarks
14	Whether BIS standards are available for the items proposed under procurement. If not, the efforts made to operationalize such standards.	
15	Whether the department had published procurement plan for next 5 years, for the item under discussion?	

The above proposal is submitted, with the approval of the Secretary of the Administrative Department/ Ministry, for the consideration of the Competent Authority, as mandated by D/o Expenditure order dated 15th May, 2020 regarding Amendment in GFRs-2017, regarding Global Tender Enquiry.

Also, it is informed that the above proposal had been sent to Cabinet Secretariat (via Email ID: ca4-cabsec@gov.in), D/o Expenditure (via Email ID: GTEnquiry-200@gov.in) and to DPIIT, for their consideration.

Stamp and Signature of the
Authorized officer of the proposing Department
Name
Designation
Contact Number
Email ID

Table-2

Details of procurement of the said item over the past three years (Three completed financial years and the current financial year) inclusive of supply details.

Year of contract	Item	Contract No. & date	Supplier	Quantity of supply with unit	Rate per unit	Completion date of contract	Country of Origin of goods	Local content in %

Annexure-4: Purchase without Quotation Format

[Refer Para 5.8 (iii)(a)]

Ref No:	_____		
Place:	_____	Date:	_____

"I, _____, am personally satisfied that the goods (described below) purchased are of the requisite quality and specification and have been purchased from a reliable supplier/ contractor at a reasonable price."

Item:	
Quantity:	
Indenter:	
Unit Rate:	
Taxes/Duties:	
Other Charges:	
Total Unit Price:	
Total Price:	
Purchased from: M/S	
Vide Bill No.:	
Justification:	
Cheque may be drawn in favour of	
Name:	
Designation:	
Signature:	

Annexure-5: Sample Prequalification Criteria

[Refer Para 5.11.1.3 (c)]

Criteria 1 - Experience and Past Performance:

- i) The bidder (*manufacturer or principal of authorised representative – hereinafter referred simply as ‘The Bidder’*) should have regularly for at least the last [three¹⁰⁶] years, ending 31st March (or any other year ending followed in relevant country) of the previous financial year (*hereinafter called ‘The relevant Date’*), manufactured and supplied (*/ erected/ commissioned*)¹⁰⁷ [Name of Requirement], with the same or higher specifications [having/with – parameters¹⁰⁸] (*hereinafter called ‘The Product’*), and
- ii) The bidder should have manufactured and supplied (*/ erected/ commissioned*) at least [____¹⁰⁹] numbers (*herein after referred as ‘The Qualifying Quantity’*) of ‘The Product’ in at least one of the last five years ending on ‘The relevant Date’, and out of which
- iii) (*At least [one¹¹⁰] numbers of offered version/ model of ‘The product’ should be in successful operation for at least [two¹¹⁰] years on the date of bid opening.*)¹⁰⁷

Criteria 2 - Capability- Equipment & manufacturing Facilities:

‘The bidder’ must have an annual capacity to manufacture and supply (*/ erected/ commissioned*)¹⁰⁷ at least ‘The Qualifying Quantity’.

Note: In case of multiple products in a tender, this criterion shall be applicable product wise. For example, in case of Printing Paper of different specifications/ sizes, it shall be applicable to quantity of paper manufactured and supplied specification/ size wise.

Criteria 3 - Financial Standing – under all conditions

- a) The average annual financial turnover of ‘The bidder’ during the last three years, ending on ‘The relevant Date’, should be at **Rs. [-----] millions¹¹¹** (or equivalent in foreign currency at exchange rate prevalent on ‘The Relevant Date’) as per the annual report (audited balance sheet and profit & loss account) of the relevant period, duly authenticated by a Chartered Accountant/ Cost Accountant in India or equivalent in relevant countries.
- b) The net worth of the Bidder firm (manufacturer or principal of authorised representative) should not be negative on ‘The Relevant Date’ and also it should have not eroded by more

¹⁰⁶ Change number of years if needed

¹⁰⁷ Add text within bracket in case of Plant and Machinery only and delete for others

¹⁰⁸ Insert the defining parameters like Speed or defining technology here

¹⁰⁹ Fix the quantity as 40 – 80 % or any other % of the quantity in the Bid Documents rounded upto next whole number. In case of uncommonly large quantity procurements, a lower percentage would ensure that otherwise capable suppliers do not get ruled out. In case of smaller procurements, a higher percentage would ensure that low capability vendors do not vitiate competition.

¹¹⁰ Fill up a reasonable number. In a new technology product, the Manufacturer is not likely to meet the requirements number of products or of number of years’ operating successfully; hence these can be reduced in such cases.

¹¹¹ Fix the value as 40 – 80 % or any other % of the estimated cost of the quantity in the Bid Document. Please note that Rs 1 Cr = Rs 10 million.

than **30%** (thirty percent) in the last three years, ending on 'The Relevant Date'¹¹².

Note: In case of Indian Bidders/ companies (manufacturer or principal of authorised representative) who have been restructured by Banks in India, under the statutory guidelines, they would be deemed to have qualified the Financial standing criteria considering the institutional financial backing available to them.

Applicability in Special Cases:

- a) Applicability to 'Make in India': Bidders (manufacturer or principal of authorised representative) who have a valid/ approved ongoing 'Make in India' agreement/ program and who while meeting all other criteria above, except for any or more of sub-criteria in Experience and Past Performance above, would also be considered to be qualified provided:
- 1) their foreign 'Make-in-India' associates meets all the criteria above without exemption, and
 - 2) the Bidder submits appropriate documentary proof for a valid/ approved ongoing 'Make in India' agreement/ program.
 - 3) the bidder (manufacturer or principal of authorised representative) furnishes along with the bid a legally enforceable undertaking jointly executed by himself and such foreign Manufacturer for satisfactory manufacture, Supply (and erection, commissioning if applicable) and performance of 'The Product' offered including all warranty obligations as per the general and special conditions of contract.
- b) Authorized Representatives: Bids of bidders quoting as authorised representative of a principal manufacturer would also be considered to be qualified, provided:
- 1) their principal manufacturer meets all the criteria above without exemption, and
 - 2) the principal manufacturer furnishes a legally enforceable tender-specific authorisation in the prescribed form assuring full guarantee and warranty obligations as per the general and special conditions of contract; and
 - 3) the bidder himself should have been associated, as authorised representative of the same or other Principal Manufacturer for same set of services as in present bid (supply, installation, satisfactorily commissioning, after sales service as the case may be) for same or similar 'Product' for past three years ending on 'The Relevant Date'.
- c) For Existing successful Past Suppliers: In case the bidder (manufacturer or principal of authorised representative) who is a successful past supplier of 'The Product' in at least one of the recent past *[three]^{106 above}* procurements, who do not meet any or more of requirements above, would also be considered to be qualified in view of their proven credentials, for the maximum quantity supplied by him in such recent past.
- d) Joint Ventures and Holding Companies: Credentials of the partners of Joint ventures cannot (repeat cannot) be clubbed for the purpose of compliance of PQC in supply of Goods/ Equipment, and each partner must comply with all the PQC criteria independently. However for the purpose of qualifying the Financial Standing Criteria, the Financial Standing credentials of a Holding Company can be clubbed with only one of the fully

¹¹²Notified vide OM No.F.1/16/2020-PPD issued by Department of Expenditure dated 11.02.2021

owned subsidiary bidding company, with appropriate legal documents proving such ownership.

NOTE FOR BIDDERS:

- a) **Doctrine of Substantial Compliance'**: The Pre-Qualification Bidding (PQB) and Pre-Qualification Criteria (PQC) are for shortlisting of sources who are competent to perform this contract to ensure best value for money from expenditure of Public Money. This process is neither intended to bestow any entitlement upon nor to create any rights or privileges for the Bidders, by way of overly hair-splitting or viciously legalistic interpretations of these criteria, disregarding the very rationale of the PQB and PQC. Keeping this caveat in view, interpretation by Procuring Entity would be based on common usage of terminologies and phrases in public procurement in accordance with the 'Doctrine of Substantial Compliance' and would be final.
- b) Along with all the necessary documents/ certificates required as per the tender conditions, the bidder should furnish a brief write-up, backed with adequate data, explaining his available capacity (both technical and financial), for manufacture and supply of the required goods/equipment, within the specified time of completion, after meeting all their current commitments.
- c) Supporting documents submitted by the bidder must be certified as follows:
 - i) All copy of supply/work order; respective completion certificate and contact details of clients; documents issued by the relevant Industries Department/ National Small Industries Corporation (NSIC)/ manufacturing licence; annual report, etc., in support of experience, past performance and capacity/capability should be authenticated by the by the person authorised to sign the tender on behalf of the bidder. Original Documents must be submitted for inspection, if so demanded.
 - ii) All financial standing data should be certified by certified accountants, for example, Chartered Accountants/ Cost Accountants or equivalent in relevant countries; and Indian bidder or Indian counterparts of foreign bidders should furnish their Permanent Account Number.

Note for Purchaser

Portions in italics are for your decision/ guidance; these are not to be printed in the bid documents. Portion within [] brackets are to be filled without brackets. Footnotes are for internal guidance and should not be part of the bid documents

Annexure-6: AFFIDAVIT

(To be given separately by each Consortium/Joint Venture member of the Bidder on Stamp Paper of appropriate value)

[Refer Para 6.3.4 (x)]

I, _____ S/o _____, Resident of _____, the _____ [insert designation] of the [insert name of single bidder/ Consortium/Joint Venture member if Consortium/Joint Venture] do solemnly affirm and state as follows:

1. I say that I am the authorized signatory of _____ [insert name of company/Consortium/Joint Venture member] (hereinafter referred to as "Bidder/Consortium/Joint Venture Member") and I am duly authorized by the Board of Directors of the Bidder/Consortium/Joint Venture Member to swear and depose this Affidavit on behalf of the Bidder/Consortium/Joint Venture Member.

2. I say that I have submitted information with respect to our eligibility for RailTel Corporation of India Ltd. (hereinafter referred to as "RCIL") (NAME OF WORK) (hereinafter referred to as "Project") Request for Proposal ('RFP') document and I further state that all the said information submitted by us is accurate, true and correct and is based on our records available with us.

3. I say that, we hereby also authorize and request any bank, authority, person or firm to furnish any information, which may be requested by RCIL to verify our credentials/ information provided by us under this tender and as may be deemed necessary by RCIL.

4. I say that if at any point of time including the extension period, in case RCIL requests any further/additional information regarding our financial and/or technical capabilities, or any other relevant information, we shall promptly and immediately make available such information accurately and correctly to the satisfaction of RCIL.

5. I say that, we fully acknowledge and understand that furnishing of any false or misleading information by us in our RFP shall entitle us to be disqualified from the tendering process for the said Project. The costs and risks for such disqualification shall be entirely borne by us.

6. I state that all the terms and conditions of the Request for Proposal (RFP) document has been duly complied with.

DEPONENT

VERIFICATION

I, the above-named deponent, do verify that the contents of paragraphs 1 to 6 of this affidavit are true and correct to my own knowledge. No part of it is false and nothing material has been concealed. Verified at, on this day of _____.

DEPONENT

Annexure-7: CONSORTIUM AGREEMENT /MEMORANDUM OF AGREEMENT

[Refer Para 6.3.4 (x)]

(On Stamp Paper of appropriate value)

This Consortium Agreement is executed at on this _ day of _____.

BETWEEN

M/s._____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____acting through its Managing Director, duly authorized by a resolution of the Board of Directors dated (hereinafter referred to as the 'LEAD MEMBER' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the ONE Part;

AND

M/s._____, a Company having its Office at _and Office at _____acting through its Joint President/ MD/.., _____, duly authorized by a resolution of the Board of Directors dated _____(hereinafter referred to as the ('Participant member') which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the OTHER PART'

AND

M/s._____, a Company having its Office at _and Office at _____, acting through its Joint President/ MD/.., _____ duly authorized by a resolution of the Board of Directors dated _____(hereinafter referred to as the ('Participant member') which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the OTHER PART'

Whereas RailTel Corporation of India Ltd. (hereinafter referred to as 'RCIL') has invited tenders for the "(NAME OF WORK)" in terms of the tender documents issued for the said purpose and the eligibility conditions required that the applicants bidding for the same should meet the conditions stipulated by RCIL for participating in the bid by the Consortium for handling the project for which the tender has been floated by RCIL.

AND WHEREAS in terms of the bid documents the parties jointly satisfy the eligibility criteria laid down for a bidder for participating in the bid process by forming a Consortium between themselves.

AND WHEREAS the parties hereto have discussed and agreed to form a Consortium for participating in the aforesaid bid and have decided to reduce the agreed terms to writing.

NOW THIS CONSORTIUM Agreement hereby WITNESSES:

1. That in the premises contained herein the Lead Member and the Participant Member having decided to pool their technical know-how, working experiences and financial resources, have formed themselves into a Consortium to participate in the tender process for "(NAME OF WORK)" in terms of the tender invited by RailTel Corporation

of India Ltd., (RCIL).

2. That the members of the Consortium have represented and assured each other that they shall abide by and be bound by the terms and conditions stipulated by RCIL for awarding the tender to the Consortium so that the Consortium may take up the aforesaid “(NAME OF WORK)” in case the Consortium turns out to be the successful bidder in the bid being invited by RCIL for the said purpose.
3. That the members of the Consortium have satisfied themselves that by pooling their technical know-how and technical and financial resources, the Consortium fulfills the prequalification/ eligibility criteria stipulated for a bidder, to participate in the bid for the said tender process for “(NAME OF WORK)”
4. That the Consortium have agreed to nominate any one of __ , and as the common representative who shall be authorized to represent the Consortium for all intents and purposes for dealing with the Government and for submitting the bid as well as doing all other acts and things necessary for submission of bid documents such as Tender Application Form etc., Mandatory Information, Financial Bid. etc., and such other documents as may be necessary for this purpose.
5. That if any change in the membership of the Consortium be required to be made by the members of the Consortium, the same shall be done with the consent of RCIL subject to the conditions as may be stipulated by them in this regard.
6. That in case to meet the requirements of bid documents or any other stipulations of RCIL, it becomes necessary to execute and record any other documents amongst the members of the Consortium, they undertake to do the needful and to participate in the same for the purpose of the said project.
7. That it is clarified by and between the members of the Consortium that execution to this Consortium Agreement by the members of the Consortium does not constitute any type of partnership for the purposes of provisions of the Indian Partnership Act and that the members of the Consortium shall otherwise be free to carry on their independent business or commercial activities for their own respective benefits under their own respective names and styles. This Consortium Agreement is limited in its operation to the specified project.
8. That the Members of the Consortium undertake to specify their respective roles and responsibilities for the purposes of implementation of this Consortium Agreement and the said project, if awarded to the Consortium, to meet the requirements and stipulations of RCIL.
9. The consortium formed will not be subject to alteration with regard to change in constituting firms and/or reorientation of roles. Any changes, if proposed by Consortium to take advantage of certain developments during evaluation stage will render the bid liable to be rejected.
10. All partners of the consortium shall be jointly and severally liable to RailTel for the execution of the entire contract in accordance with its terms.
11. Each Consortium member has minimum 20% contribution in the work and role/scope of each member is enclosed.

12. Power of Attorney by all members of the Consortium in favor of the Lead Member is also enclosed.

IN FAITH AND TESTIMONY WHEREOF, THE PARTIES HERETO HAVE SIGNED THESE PRESENTS ON THE DATE, MONTHS AND YEAR FIRST ABOVE WRITTEN.

1. () 2. () 3. ()
Managing Director Managing Director Managing Director

() () ()
For (Name of company) For (Name of company) For (Name of company)

WITNESSES:

- 1.
- 2.

Enclosure:

Board resolution of each of the Consortium Members authorizing:

- (i) Execution of the Consortium Agreement, and
- (ii)Appointing the authorized signatory for such purpose.

Annexure-8: Manufacturer Authorisation Form (MAF)

[Refer Para 6.8]

Dated:

To,

(_____)

RailTel Corporation of India Ltd.

.....
.....
.....

Subject: Manufacturer Authorization form (MAF) to M/s for

Ref: Bid No.....dated.....

Dear Sir,

We, M/s....., are established and reputed manufacturer and service provider of (Product details), having our registered office at

We hereby authorize M/s (bidder name), Office to participate in bid and subsequently upon award of the bid to execute the supply and Installation & Commissioning of our range of products against your above said bid.

We further extend our warranty for years for our range of products offered by M/s against the above-said bid.

Thanking you,

Best regards,

Authorized Signatory

Annexure-9: Example for Concurrent Application of PPP-MSE and PPP-MII Order during Evaluation

[Refer Para 8.4.4 (c.1.4)]

(Scenario: Divisible items, both MSEs as well as Class-I local suppliers eligible for purchase preference and L-1 is “Non-MSE non-Class-I local supplier)

Item: Desktop Computer

Qty: 50 Nos.

Details of Bids received

S#	Name Bidder	of	Rates quoted	Price Ranking	Status of Bidder
1	A		100	L1	Non-MSE non Class-I local supplier
2	B		110	L2	Non-MSE but Class-I local supplier
3	C		112	L3	MSE but non-Class-I local supplier
4	D		115	L4	Non-MSE but Class-I local supplier
5	E		118	L5	MSE but non Class-I local supplier
6	F		120	L6	MSE Class-I local supplier

1. In this case, first purchase preference is to be given to MSEs as per PPP-MSE Order for 25% of tendered quantity of 50 nos. i.e. 12.5 nos (rounded off to the next whole number say 13 nos.). Accordingly, invite L3 (bidder C), whose quoted rates falls within 15% margin of purchase preference of match L1 price i.e. Rs. 100/- for quantity of 13 nos. Bidder ‘E’ and ‘F’ , although MSEs, will not get purchase preference since their quoted rates don’t fall within 15% margin of purchase preference. Bidder C will be considered for order of 13 nos. on confirmation of reduction of price.
2. For 50% of balance quantity of 37 number (tendered quantity of 50-13 awarded to bidder C; assuming bidder C has confirmed to accept L1 rates), purchase preference will be given to lowest Class-I local supplier as per PPP-MII Order. Accordingly, bidder B will be invited to match L-1 price for 50% of 37 nos i.e. 18.5 (say 19 nos. of computers). If bidder ‘B’ does not accept the L1 price i.e. price of Rs. 100/- per unit, next higher Class-I local supplier falling within 20% margin of purchase preference, i.e. bidder ‘D’, may be invited to match L-1 price for 19 nos. of computers and so on.
3. For remaining quantity i.e. 18 nos (50-13-19), the contract will be awarded to lowest quoting bidder i.e. bidder ‘A’ who is L-1 in the example.

Annexure-10: Invitation and Declaration for Negotiations

[Refer Para 8.5.8 (iv) (b & c)]

Invitation for Negotiations

(On letterhead of RailTel)

No: _____

Dt: _____

To M/s _____ **Registered A/D**

Sub: **Tender No** ----- **opened on** ----- **for the supply of** -----

Dear Sir,

The rates quoted in your tender are considered high. You are therefore, requested to come for negotiations of rates, on..... (date) at..... (time) at..... (venue).

You should, however, come for negotiations only in case you are prepared to furnish before such date the declaration appended herewith.

A copy of the form in which you may submit your revised offer after negotiations is enclosed.

	Yours faithfully,
Enclosure: i) Form of Declaration ii) Form of Revised Offer	(Authorised Officer)

FORM OF DECLARATION

(To be signed and submitted before start of negotiations)
(On company letterhead)

No: _____

Dt: _____

To _____

Sub: **Tender No** ----- **Opened on** ----- **for the supply of** -----

Ref: Your invitation for negotiations No: dated:

Dear Sir,

I _____ duly authorised on behalf of M/s. _____ do declare that in the event of failure of the contemplated negotiations relating to Tender No. _____ opened on _____ my original tender shall remain open for acceptance on its original terms and conditions.

	Yours faithfully,
Place: _____ Date: _____	Signatures of bidder, or officer authorised to sign the bid documents on behalf of the bidder

Annexure-11: Format of Revised Offer in Negotiations

[Refer Para 8.5.8 (iv)(d)]

Revised Offer in Negotiations

(On company letterhead)

From.....

Full address.....

To

Sir,

Sub: **Tender No ----- opened on -----for the supply of -----**

Ref: Your invitation for negotiations no: dated:

1. On further discussions with your representatives onin response to your letter no dated

We are not prepared to reduce the rates already quoted in the original tender, which will remain valid up to.....

Or

1. I / we reduce my/our rates as shown in the enclosed schedule of items.
2. I / we am/are aware that the provisions of the original bidding document remain valid and binding on me.
3. I/we undertake to execute the contract as per following Schedule.....
4. I/we agree to abide by this tender on the revised rate quoted by me/us, it is open for acceptance for a period of 120/180 (one hundred twenty to one hundred eighty) days from this date, *i. e.*, up to and in default of my/our doing so, I/we will forfeit the earnest money deposited with the original tender/ attached herewith. Eligibility as valid tenderers shall be deemed to be the consideration for the said forfeiture.

Yours faithfully,

Signatures of bidder or
officer authorised to sign the bid
documents on behalf of the bidder

Annexure-12: Format for Extension of Delivery Period/Performance Notice

[Refer Para 9.7.3 (v)]

Name of the Procuring Entity _____

Extension of Delivery Period/Performance Notice

To M/s (name and address of form)

Sub: Contract No ----- **dated** ----- **for the supply of** -----

Ref: Your letter no. ----- **dated:** -----

Dear Sir,

1. You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In your letter under reply you have asked for [further] extension of time for delivery. In view of the circumstances stated in your said letter, the time for delivery is extended from (fill in date) to (fill in date).
2. Please note that notwithstanding the grant of this extension in terms of Clause (fill in clause number) of the subject contract an amount equivalent to.....% (.....per cent) of the delivered price of the delayed goods for each week of delay or part thereof (subject to the ceiling as provided in the aforesaid clause) beyond the original contract delivery date/the last unconditionally re-fixed delivery date (as & if applicable), viz., (fill in date) will be recovered from you as liquidated damages. You may now tender the Stores for inspection [balance of the Stores] in terms of this letter. Stores if any already tendered by you for inspection but not inspected will be now inspected accordingly.
3. You are also required to extend the validity period of the performance guarantee for the subject contract from (fill in present validity date) to (fill in required extended date) within 15 (fifteen) days of issue of this amendment letter.
4. The above extension of delivery date will also be subject to the following Denial Clause.
 - (i) That no increases in price on account of any statutory increase in or fresh Imposition of GST or any other taxes/duty, including custom duty), leviable in respect of the Stores specified in the said contract which takes place after (insert the original delivery date) shall be admissible on such of the said Stores, as are delivered after the said date; and
 - (ii) That notwithstanding any stipulation in the contract for increase in price on any other ground including foreign exchange rate variation, no such increase which takes place after (insert the original delivery date) shall be admissible on such of the said Stores as are delivered after the said date.
 - (iii) But nevertheless, the purchaser shall be entitled to the benefit of any decrease in price on account of reduction in or remission of GST or on account of any other Tax or duty or on any other ground as stipulated in the price variation clause or foreign exchange rate variation which takes place after the expiry of the above

mentioned date namely (insert the original delivery date)

- (iv) All other terms and conditions of the contract remain unaltered. This is without any prejudice to purchasers' rights under the terms and conditions of the subject contract.
- (v) Please intimate your unconditional acceptance of this amendment letter within 10 (ten) days of the issue of this letter failing which the contract will be cancelled at your risk and expense without any further reference to you.

Yours faithfully,

(Authorised Officer)

Duly authorised, for and on behalf of RailTel

Note: Select one option within { } brackets; delete portion within [] brackets, if not applicable; fill in () brackets. Brackets and this note are not to be typed.

Substitute following first para instead of first para in format above, for issuing a performance notice.

“You have failed to deliver {the (fill in qty.) of Stores/ the entire quantity of Stores} within the contract delivery period [as last extended up to] (fill in date). In spite of the fact that the time of delivery of the goods stipulated in the contract is deemed to be of the essence of the contract, it appears that (fill in the outstanding quantity) are still outstanding even though the date of delivery has expired. Although not bound to do so, the time for delivery is extended from (fill in date) to (fill in date) and you are requested to note that in the event of your failure to deliver the goods within the delivery period as hereby extended, the contract shall be cancelled for the outstanding goods at your risk and cost.”

Annexure-13: Proprietary Article Certificate

Valid for Current Financial Year

(Refer Para 5.6.1)

File Number and Date Reference		
1	Description of article	
2	Forecast of quantity/annual requirement	
3	Approximate estimated value for above quantity	
4	Maker's name and address	
5	Name(s) of authorised dealers/ stockists	
6	I approve the above purchase on PAC basis and certify that: -- Note- Tick to retain only one out of (b), (c-1) or (c-2) whichever is applicable and cross out others. Please do confirm (a) by ticking it – without which PAC certificate will be invalid.	
6(a)	This is the only firm who is manufacturing/stocking this item. AND	
6(b)	A similar article is not manufactured/sold by any other firm, which could be used in lieu OR	
6(c-1)	No other make/brand will be suitable for following tangible reasons (like OEM/ warranty spares): OR	
6(c-2)	No other make/brand will be suitable for following intangible reasons (if PAC was also given in the last procurement cycle, please also bring out efforts made since then to locate more sources):	
7	Reference of concurrence of finance wing to the proposal:	_____

Signature of Approving Authority-----

Date -----

Designation of Officer-----

Annexure-14: Model Format for Correspondence with Supplier after Expiry of Delivery Date

[Refer Para 9.7.9 (iii)]

Registered Acknowledgement Due

To

M/s _____

Sub : Contract No..... dated for supply of

Dear Sirs,

The date of delivery of the subject contract expired on _____. As supplies against the same have not yet been completed, there is a breach of the contract on your part. As information is required regarding past supplies against this contract, you are requested to send the particulars regarding the quantity supplied so far and, also, the quantity inspected so far, but not yet dispatched and the quantity ready but so far not tendered for inspection before the expiry of the date of delivery.

The above information is required for the purpose of verification of our records and is not intended to keep the contract alive and does not waive the breach. This is without prejudice to the rights and remedies available to the purchaser in terms of the contract and law applicable in this behalf.

Yours faithfully,

(-----)

(Authorised Officer)

Duly authorised, for and on behalf of RailTel

Annexure-15: No Claim Certificate

(On Company letterhead)

[Refer Para 9.10]

To,

(Contract Executing Officer)

RailTel_____

NO CLAIM CERTIFICATE

Sub: **Contract Agreement no. ----- dated -----for the supply of -----**

We have received the sum of Rs. (Rupees _____ only) in full and final settlement of all the payments due to us for the supply of under the above mentioned contract agreement, between us and Government of India. We here by unconditionally and without any reservation whatsoever, certify that with this payment, we shall have no claim whatsoever, of any description, on any account, against Procuring Entity, against aforesaid contract agreement executed by us. We further declare unequivocally, that with this payment, we have received all the amounts payable to us, and have no dispute of any description whatsoever, regarding the amounts worked out as payable to us and received by us, and that we shall continue to be bound by the terms and conditions of the contract agreement, as regards performance of the contract.

Yours faithfully,

Signatures of contractor or
officer authorised to sign the contract documents
on behalf of the contractor
(company stamp)

Date: __

Place: _

Annexure-16: Long Terms Maintenance Form/Annual Maintenance Contract (AMC) by OEM

(On Company letterhead)

[Refer Para 10.2 (viii)]

To
The (_____),
RailTel Corporation of India Limited

Applicable for OEM directly participating in the tender

I/We here by confirm that we have

Read specifications & tender conditions of RailTel Tender No. and accept that the requirement of Long Term Maintenance Support as per Clause [Mention relevant clause appearing in the tender document] shall be met **by us directly or through our subsidiary in India** as per rates quoted in the Price Bid. I/ We shall provide services as per terms and conditions pertaining to Long Term Maintenance Support of tender document.

Or

Applicable for Authorized Distributor/Partner of OEM

I/We here by confirm that we have read specifications & tender conditions of RailTel Tender No. and accept That the requirement of Long Term Maintenance Support as per [Mention relevant clause appearing in the tender document] shall be met **by Authorized Distributor/Partner of OEM. However, if Authorized Distributor/Partner fails to fulfil the support obligation due to any un-foreseen circumstances, the same shall be provided by us directly or through our subsidiary in India for the mentioned/remaining period at the quoted prices by the bidder. I/We have gone through the requirement mentioned in the Tender Document and shall provide services as per terms and conditions** pertaining to Long Term Maintenance Support of tender document.

(Signature of OEM's
Authorized Officer) Seal

Signature of witness:

1.....

2.....

Note: Please Strike out whichever is not applicable.

Annexure-17: Proforma for Recommendation of Survey Committee for Scrapping of Asset

[Refer Para 11.4.3 (ii)]

Proposal for Scrapping of _____

A. Details of Asset

1. Name and description of asset:
2. Date of installation/ capacity:
3. Details of subsequent expansion, if any:
4. Prescribed life of the asset:
5. Whether at present life expired: YES/NO
6. Identification number marked for the asset:
7. Cost/booked expenditure in r/o asset & its expansion, if any:
8. Present book value of the asset (i.e. present depreciated value):
9. Annual expenditure on maintenance:
10. Total expenditure on maintenance since installation:

B. Performance of the Asset

1. Past history & performance of the asset:
2. Present status of the asset:
3. If faulty, likely expenditure to restore, if any:
4. Fault rate:
5. Reasons for scrapping along with performance indicators:
6. Any other remarks:

C. In case of premature scrapping

1. Special reason of premature scrapping:
2. Option(s) considered to restore the efficiency/put in working condition:
3. Asset or any part/ component of the asset which can be re-usable elsewhere:

D. Residual value of the asset

1. Expected sale value of the asset scrapped:
2. Whether any exchange option is available to replace the asset (such as batteries, DG sets, ACs etc.):

Recommendation of the Survey Committee

Reports to be signed by all the members of the survey committee. The committee shall review the scrap position at an interval of every six months (i.e. twice in a year)

Annexure-18: Format for Bid Security Declaration

(Refer Para 7.1.1)

(On Non-judicial stamp paper of Rs. 100/-)

Whereas, I/We _____ (Name of Agency) has submitted bid for _____ (Name of Work and Tender No.) and whereas Earnest Money Deposit is being exempted in the aforesaid tender to give relief to the bidders as per Govt. of India guidelines due to severe financial crunch on account of slowdown in the economy due to the pandemic,

I/We hereby submit the following "Bid Security Declaration" in lieu of exemption from submitting Earnest Money Deposit :-

1) If I/We withdraw or modify my/our bid during the bid validity period (including extended validity of tender) specified in the tender documents;

Or

2) If, after the award of work, I/We fail to accept LOA/LOI, or to sign the contract agreement or fail to submit performance guarantee or fail to commence the work within stipulated time period prescribed in tender documents;

Or

3) If I/We furnish any incorrect or false statement / information/ document;

Or

4) If I/We hide any relevant information or do not disclose any material fact in the tender;

Or

5) If I/We commit any breach of integrity Pact;

I/We may be disqualified and banned for a period of three years and shall not be eligible to bid for future tenders in RailTel Corporation of India Ltd. for the period of three years from date of issue of such orders.

(Signed by the Authorized Representative of Firm)

Name of Authorized Representative

Name of Firm

Date

Annexure-19: Example of Formula for Price Variation Clause

[Refer Para 7.5 (v)(k)]

(The formula for price variation should ordinarily include a fixed element and input elements (material / labour, other inputs e.g., fuel etc. may also be added, if relevant). The figures representing the material element and the labour element should reflect the corresponding proportion of input costs, while the fixed element may range from 10 to 25% (ten to twenty-five percent). The portion of the price represented by fixed element includes fixed costs and profits and is not subject to variation. The portions of the price represented by the material element and labour element along will attract price variation in proportion to their relative share in total cost.)

The formula for price variation will thus be:-

$$Pa = Po \left[\frac{\left(F + a \left(\frac{M1}{Mo} \right) + b \left(\frac{L1}{Lo} \right) \right)}{100} \right] - Po$$

Where: -

P_a is then adjustment amount payable to the supplier (a minus figure will indicate a reduction in the contract price) on the date of supply.

P_o is the contract price assumed to be price prevailing on the base date (date of last deadline for submission of bids) but is based on indices prevailing on dates prior to this date as explained in **L_o** and **M_o** below.

F is the weightage of fixed element not subject to price variation, as a percentage of the total price.

a is the weightage of the material element, as a percentage of the total price.

b is the weightage of the labour element, as a percentage of the total price.

F, **a** and **b** being percentages should total 100. It's very important that these weightages (especially of elements (e.g., fuel, that are known to only become costlier) should match the actual content of Goods, otherwise PVC may result in excessive profit or loss to the bidder.

L_o and **L₁** are the average wage indices for the quarter before the respective quarters in which base date and date of supply falls; respectively. For example, for a tender with deadline of submission in March 17, 2022, and date of supply is September 15, 2022, **L_o** would be average wage index for the quarter of Oct-Dec 2021 and **L₁** would be average wage index for the quarter of Apr-Jun 2022.

¹¹³**M₀** and **M₁** are the material prices/indices as average of the month, two month prior to the month in which base date falls and average of the month, two month prior to the month in which date of supply falls, respectively. For example, for a tender with deadline of submission in March 17, 2022, and date of supply is September 15, 2022, **M₀** would be prices/index as average of the month of January 2022 and **M₁** would be prices/index as average of the month of July 2022. All material prices/indices will be basic prices without excise duty and GST.

If more than one major item of material is involved, the material element can be broken up into two or three components such as **M_x**, **M_y**, **M_z**.

The following conditions would be applicable to price adjustment:

- Base date for indices/ Price shall be taken as the date of last deadline of submission of bids. L_0 and M_0 would be calculated with time lag before the base date as mentioned above.
- Date of supply shall be the date for calculation of L_1 and M_1 with time lag as mentioned above.
- No price increase is allowed beyond original delivery period.
- No price adjustment shall be payable on the portion of contract price paid to the seller as an advance/interim payment after the date of such payment.
- No price adjustment shall be payable if this is less than or equal to 2% (two percent) of P_0 .
- Total adjustment will be subject to maximum ceiling of ____%, beyond which the price variation would be capped at this level. As soon as it comes to light that price variations are likely to go beyond this ceiling, and if the Supplier is not agreeable to the price variation being capped at that level, he may notify the Purchaser under 'Frustration of Contract' provisions in the Tender Document/ Clause, for termination of contract.
- Payments for each supply would initially be made as per the base price mentioned in the contract. Price adjustment bill should be submitted only quarterly for the supplies made during the quarter.
- In GTE tenders extra care should be taken in selecting the price indices. Preferably the price indices should be from the same country and of same currency as the country and currency of the bidder. In case price is in a currency of a country where inflation is low and the indices are from country with much higher inflation rates, $\left(\frac{M_1}{M_0}\right)$ and $\left(\frac{L_1}{L_0}\right)$ should be multiplied by a correction factor of exchange rates $\left(\frac{E_0}{E_1}\right)$, where E_0 is the exchange rate of country of M and L indices with reference to currency of price P. For example, if M&L are from India and P is in \$, then E_0 is Number of Rs. in a \$ on base date and E_1 is the exchange rate on determination date.
- Even if there is no price adjustment claim, supplier must submit all relevant data to prove that there is no downward variation. In any case he must submit a declaration as follows;

¹¹³ Only materials directly used in manufacture should be included in PVC. Other materials used in running of production machines or factory (indirect materials) should not be included.

“It is certified that there has been no decrease in the price as a result of decrease in price variation indices in the variation formula. In the event of any decrease of such indices that come to light later regarding the payment claimed by us, we shall promptly notify this to the purchaser and we undertake to refund and agree to the purchaser deducting from future our payment due, any excess payment made to us in this regard.”

