

# New Mangalore Port Authority



## Manual for Procurement of Works for Civil Engineering Department

April 2024

## **FOREWORD**

1. Central Vigilance Commission (CVC) has been issuing various guidelines on Public Procurement from time to time and are hosted in commission's websites. Apart from the guidelines issued by CVC, Department of Expenditure (DoE) GOI has also been issuing guidelines on public procurement.
2. CVC after deliberation with DoE and within the organizations has come to logical conclusion that it would be appropriate if Public Procurement guidelines are issued from DoE.
3. The CVC vide Circular No. 14/07/22 dtd. 11-07-2022 has communicated its decision that for sake of uniformity and avoid multicity of Authorities for issuance of guidelines on procurement related issues, updated manuals may be issued by DoE only, after taking consideration the guidelines issued by CVC.
4. The DoE have updated and released the manual wherein the guidelines issued by the commission on Public procurement has also been assimilated.
5. Instructions on procurement issued by DoE from time to time have been incorporated in the manual published on June 2022. Further, all the procurement related instructions issued by Central Vigilance Commission have been subsumed into the manual in collaboration with Commission.
6. The Vigilance Department, vide OM No CVO/Circular/2022/711 dated 11-08-2022 had instructed for revision of the Manual for Procurement of Works in line with manual for Procurement of Works June 2022 published by Department of Expenditure, Ministry of Finance, enclosed as Annexure I
7. The Civil Engineering Department has Works Manual, which was approved in the Port Trust Board, in the meeting held on 26th September 2000.
8. In view of the directions of CVO, the Civil Engineering Department has updated the manual for Civil Engineer works in line with Manual for Procurement of Works June 2022 published by DoE.
9. In case of any provisions of the Manual conflicts with the provisions of Any act, Rules, Policies, guidelines, Govt. Instructions CVC advices GFR etc. the provision of latest shall prevail. The department shall review such clauses as and when required.
10. In case of any doubt in interpretation of any clause in the manual Chairman is the competent authority to decide the doubt.

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## **CHAPTER – 1 ORGANISATIONAL SET UP**

### **1.1 Civil Engineering Department:**

The Civil Engineering Department is entrusted with the task of identifying, conceiving and formulating all the development works of the New Mangalore port including preparation of detailed project report follow up actions, preparation of detailed estimates and drawings, invitation, finalization of tenders and execution of the projects including co-ordination with various local bodies/outside agencies/departments at various stages of planning, design and execution. The department is also responsible for the maintenance and up-keep of all the Civil Engineering assets of the New Mangalore Port Authority. The Civil Engineering assets include roads, sewer lines, water supply system, port and dock structures, port railway system, the estate including residential land, office building complex stack yards, Bondel and Kudupu quarry areas etc., The Civil Engineering Department is also in charge of capital and maintenance Dredging.

#### **1.1.1 Chief Engineer:**

The Chief Engineer (CE) is the Head of the Department and he is one of the Principal Officers of the New Mangalore Port Authority. He is responsible for co-ordinating all the Civil Engineering activities of New Mangalore Port Authority. He is also required to visualize future needs of the Port. The Chief Engineer is the Engineer in charge for all the plan and non-plan works. The maintenance and execution of all the Civil Engineering works come under the supervision of the Chief Engineer. As the Head of the Department of Civil Engineering, the Chief Engineer advises the Chairman and Dy. Chairman in all development activities concerning the New Mangalore Port Authority.

#### **1.1.2 Deputy Chief Engineer:**

The Deputy Chief Engineer (Civil) assists the Chief Engineer in all works mentioned above and is having independent responsibility in respect of works assigned to him.

#### **1.1.3 Superintending Engineers:**

The Divisional Officers and Sub-Divisional Officers are under the Administrative control of the Superintending Engineers. The Superintendent Engineers are also delegated with the powers of Principal employer under the Contract Labour Regulation Act. The power to conduct check measurements and signing of bills proposed in the manual should not clash with the provisions of the New Mangalore Port Authority Accounts Manual. The Superintending Engineers are also Head of Offices and Controlling Officers.

The Superintending Engineers work under the Chief Engineer/Deputy Chief

Engineer and assist them in the successful completion of all Civil Engineering works, planning of capex works, successful completion of capex works, planning and implementation of PPP projects, maintenance of Civil Engineering assets, planning and project works. The Superintending Engineers have to check measure at least 5% for all the works costing more than Rs.5.00 lakhs and all the bills amounting to more than Rs.2.00 lakhs should invariably be countersigned by Superintending Engineer. He is responsible for quality and progress of all the works.

#### 1.1.4 Executive Engineers:

The Executive Engineers are the Divisional Officers assisting the Superintending Engineers in the day-to-day functioning and they are having specific responsibilities. The Executive Engineers are the engineers in charge of plan, non-plan and revenue works. The Executive Engineer (Civil), Technical Cell is responsible for technical works of the department including correspondence with Ministry, tender invitation and awarding the works after taking approval of Competent authority. He is responsible for all Establishment works of the department. The Executive Engineers posted to site for execution of works. The Executive Engineers have to check measure atleast 10% of the works. The Executive Engineers are responsible for the alignment of structures, for the foundation of structures and the execution of reinforced concrete works including reinforcement. The structures which are to be buried will have to be check measured by the Executive Engineer atleast for 10% of their quantity. The Executive Engineers are fully responsible for quality and progress of all the works. They are also responsible for the happening at all the construction sites. The Executive Engineers have to take care of the welfare/safety of the construction workers.

The Executive Engineers are responsible for the compliance of the Safety Health and Labour Laws by the Contractors. They are also Head of Offices whenever posted as Divisional Officers. They are responsible for all the Assets and T & P of the Division.

#### 1.1.5 Assistant Estate Manager Gr.I

The Assistant Estate Manager Gr.I is responsible to the matters relating to the estate of the Port, demand/collection of the lease/license rentals, convening the Land Allotment Committee meetings, preparation of the proposal for statutory authority approvals and notification (TAMP), conducting e-tender and auction of Land parcels as per prevailing Land Policy Guidelines. The Assistant Estate Manager Gr.I reports to Chief Engineer (Civil) through the Superintending Engineer (Civil) concerned. The trees and immovable properties in the Port/Estate should be accounted for by the Assistant Estate Manager Gr.I. The boundary stones should be checked periodically.

#### 1.1.6 Assistant Executive Engineer/Assistant Engineer:

The Assistant Executive Engineer/Assistant Engineer work under the Executive Engineer and they measure the work, control the quality and progress of various Civil Engineering works. They report to the Executive Engineer. All measurements of reinforcements, foundation measures etc. are to be check measured by the Assistant Executive Engineer/Assistant Engineer for 100% of their quantity. The Assistant Executive Engineer/Assistant Engineer is fully responsible for the alignment, foundation etc. of structures. The AEE/AE shall be responsible for the portion of the check measurement done by them.

When Asst. Engineer/Asst. Executive Engineer is posted as Sub-Divisional Officer, they are responsible for all the Assets which comes under their Sub-division including T & P. Their responsibility includes control and supervision of the Sub-Divisional staff.

The Assistant Engineers posted to work in Estate office under Assistant Estate Manager Gr-I has to carry out the following works as entrusted by the AEM(Gr-I):-

1. Scrutiny the tappals received in r/o requisition of allotment of land on nomination cases & Right of Way Permissions and allied correspondences.
2. Raising the demand note/Invoice in ERP timely and monitoring/recovering the pending dues, Preparation of letter of authority connected with subjects handling and issuance to Party and requisite actions on nonpayment to be taken up timely.
3. Allotment/Renewal of land on long term/Short term basis to Govt. and non-Govt. firms and execution of lease/licence deeds. Follow up actions as per Letter of intent, agreements and timely requisite actions to be taken.
4. Action for renewal on expiry of lease, license & RoW to be put up as per lease/license deeds & RoW conditions well in advance prior one year. If any delay concern will be held responsible.
5. To furnish the inputs as & when sought for executing the agreements relating to Survey no's of the plot allotted on long term lease/license.
6. For new projects demarking the survey no's as & when required.
7. Preparation of scrutiny note/proceedings/agenda for LAC, Board meetings etc.
8. Monitoring the BG of SD of the subject allotment if any.
9. Inspection and regular rounds in the BONDEL, KUDUPU, COMMERCIAL ZONE, PANAMBUR ZONE, CUSTOM BOND, THANEERBHAVI ZONE etc., and subject allotments handled register to maintain. If any encroachment necessary action for removal the same timely.
10. Mutation of Land records, digitalization of records, Property card, GLIS and correspondences thereto.
11. Maintaining the Land records in secure and in systematic manner. 12. Taking

measurement, preparation of sketches – on the allocated zones/ Subject allotments. Frequent inspection of subject allotment handled and to submit the report for encroachment of land/actual allotment of land if any.

12. Correspondence of ISO subject/EMS related matters.
13. To put up draft reply to the letter correspondences from Ministry, audit paras internal/RAO/Vigilance/RTI on the subject works handled.
14. Coordination with TCS/EDP related to ERP, E-Office and digitalization of records.
15. All requisite registers dealing the subject works as per ISO Manual to be maintained.
16. To give input related on updation of drawing in GIS to EBL.1.
17. Monitoring/ Compliance by party on the clauses of Agreement/LOI such as
18. MGT, infrastructure built up by lessee/permittee to be developed within stipulated period clauses, statutory approvals, Payment clauses etc.
19. Assisting during eviction on the subject handled.
20. Preparation of Tender document proposals for the leases, licenses, RoW and other related allied activities.
21. Renewal of lease/license, RoW one year prior to expiry of the proposals as per Policy Guidelines and other related allied activities.
22. Calling EOI as per the requirements time to time.
23. Preparation of Land Use Plan, Master Plan, Survey of Port Land and other related allied activities.
24. New proposals on the land requirement received through Tappal, action has to be taken as per PGLM prevails time to time.
25. Preparation of requisite proposals as per the PGLM (preparation of Master plan, formulating the procedures/streamlining the allotments etc.) and its amendment time to time.
26. PPP Projects/Concessionaire allotment/Charge list, Invoice and allied activities
27. Preparation of Survey of Port Land through drone latest technology, Valuation of Port land, Proposal for engaging retired state Govt. officials for estate Boundary Security, Outsourcing the Estate works proposal and other related allied activities.
28. Proposal on fixation of SoR & submission to TAMP/Competent Authority and other allied activities.
29. Follow up actions as per Letter of intent, agreements and timely requisite actions to be taken.
30. Process for short term allotments and allied correspondences, allotment of warehouse, land for granite, timber, coke/coal, fertilizer, inside & outside custom

bound area through GIS & Monitoring the allotments/Renewal.

31. Remedial action for recovery of pending dues timely.
32. All matter related to Specified Short term licence and allied Correspondences.
33. Monitoring the remittance of rentals i.e. licence fee, GST, surcharge, penal interest on monthly basis etc.
34. Furnishing documents for Arbitration and Court cases and to put up draft reply to the letter correspondences from Ministry, internal/RAO/Vigilance/RTI on the subject works handled.
35. Updating drawings in GIS and other related allied activities.
36. Preparation of letter of authority connected with subjects handling and issuance to Party.
37. Any other works entrusted by the Assistant Estate Manager Gr-I time to time.

The Assistant Engineers posted to work in tender cell has to carry out the following works:-

1. Scrutiny of the estimates received from EE(Mtc-I), EE(Mtc-II), EE(MW) and submit for competent authority for approval.
2. Invitation of tenders and finalise the tender process
  - a. Prepare the tender document
  - b. Invite the NIT
  - c. Open the Technical bids
  - d. Convene of tender committee on technical bids
  - e. Obtain approval of the competent authority
  - f. Opening of price bids
  - g. Convene of Tender committee meeting for price bids
  - h. Obtaining approval of the competent authority to award of work
  - i. Issue of Letter of Acceptance / Work order
  - j. Release of EMD to unsuccessful bidders
  - k. Sending the original file along with LoA / Work order, original bids to respective divisions.

#### 1.1.7 Senior Head Draughtsman/Head Draughtsman

The Senior Head Draughtsman/ Head Draughtsman is in charge of the Technical Section, which usually works under the Executive Engineers directly or under the Superintending Engineer/ Deputy chief Engineer. The Senior Head Draughtsman/ Head Draughtsman will process the estimates put up by the divisions. The preparation of drawings, preparation of tender schedules, calling of tenders etc., are carried out by the Head Draughtsman/ Draughtsman Gr.II/ Draughtsman Gr.II.

## CHAPTER – 2 WORKS

### 2.1 Classification of Works:

Civil Engineering works are broadly classified three groups:

- i) Capital Works
- ii) Maintenance Works (Revenue works)
- iii) Deposit Works

### 2.2 Definitions:

#### 2.2.1 Capital Works

Capital Works Capital Works include, all new works including major modifications.

These shall mean:

- i. all new constructions having life of asset more than 5 Years,
- ii. Restorative / major repair of assets which increase life of asset beyond original life expected by 5 Years.

#### 2.2.2 Maintenance Works (Revenue works)

Maintenance Works (Revenue works) include, all works undertaken for maintenance of existing structure / assets in proper condition with in its life span. Repair and maintenance works essentially include the works concerning prevention of or making good the natural wear and tear and damages and may also include minor modifications to existing assets caused by their being in a continuous state of disrepair. Improvement of alignment, widening of carriageway and providing super elevation of curves etc. Improvement to/reconstruction of the surface in some different materials where it is desirable to do so at the time of renewing a road surface shall be grouped under maintenance works provided the works in question do not form part of a comprehensive scheme or project.

These cover operations undertaken to maintain the assets in a proper condition and include maintenance and operation of all services. The "Repairs" are further classified into two categories as follows:

- i. Annual repairs: These cover the routine as well as yearly operation and maintenance works.
- ii. Special repairs: These cover major repair or replacement or remodelling of a portion of an existing structure or installation or other works due to major breakdowns, or deterioration, or periodic renewal, which do not result in a genuine increase in the value of the property.

#### 2.2.3 Deposit works

Deposit works include those works which an outside organisation, Govt. or private,

has entrusted to the NMPA for execution, by depositing the cost of the works on the basis of estimates prepared by the concerned department of NMPA and approved by the competent authority and may consist of new construction and/or repairs to renovation/remodelling of any existing structures/assets. The following procedure shall be adopted in the execution of such deposit works:-

- i. The project estimate with the lay-out plan for the deposit work shall be got approved by the requisitioning party prior to the work being taken on hand. Any deviation involving excess expenditure over the accepted estimated values shall be brought to the notice of the requisitioning party and their acceptance should be obtained.
- ii. The organisation on whose behalf the deposit works is undertaken shall be informed that the Board of Members do not bind themselves to complete the work within the estimate cost and/or stipulated time frame though every effort will be made to comply with both the targets.
- iii. It shall be ensured that the estimated value of the proposed work plus departmental charges applicable at the material time is deposited by the party with the Board of Members, before entering into any financial commitment to the third party.
- iv. The departmental charges will be as per Annexure 5 of CPWD manual (Reference Para 3.1.1.4 (1))

#### **RATES OF DEPARTMENTAL CHARGES**

Objectives of works	All maintenance works, and minor works costing upto Rs. one lakh	Construction works costing upto Rs. Two Crores	Construction works costing between Rs. Two and five Crores	Construction works costing more than Rs. five crores
1	2	3	4	5
A. Establishment Charges				
1. Preparation of preliminary sketches	½%	¼%	¼%	¼%
2. Preparation of detailed working drawings\	1%	¾%	½%	¼%
3. Preparation of preliminary estimates	¼%	¼%	¼%	¼%
4. Preparation of detailed estimates	½%	¾%	½%	¼%
5. Preparation of structural designs	1%	1%	¾%	¾%



6. Execution		19- $\frac{1}{4}$ %	7- $\frac{3}{4}$ %	4- $\frac{3}{4}$ %	4- $\frac{1}{4}$ %
Total Establishment charges		22- $\frac{1}{2}$ %	10- $\frac{3}{4}$ %	7%	7%
T&P (Machinery Equipment)		$\frac{3}{4}$ %	$\frac{3}{4}$ %	$\frac{1}{2}$ %	$\frac{1}{2}$ %
B. Audit & Account		$\frac{1}{4}$ %	$\frac{1}{4}$ %	$\frac{1}{4}$ %	$\frac{1}{4}$ %
C. Pensionary		$\frac{1}{4}$ %	$\frac{1}{4}$ %	$\frac{1}{4}$ %	$\frac{1}{4}$ %
TOTAL		23 $\frac{3}{4}$ %	12%	8%	7%

Note:

1. The indicated rates of tools and plants are exclusive of the cost of special tools and plant, the cost of which will be charged to the estimate for the work.
2. Departmental charges shall be 50% of the standard departmental charges given above for organizations who satisfy the following criteria:-
  - (a) The organization is a non-commercial (Non profit) organisation.
  - (b) The services by the organization have been put in negative list of GST levied by the Ministry of Finance, Govt., of India.
  - (c) The organization is a statutory.
3. The above rates of Departmental charges/ fees shall not be used for any commercial transaction either with a private party or with a PSU
4. The above rates of Departmental charges/ fee is exclusive of GST. The organization shall pay applicable GST separately.
5. Fee for preparation of plans and estimates, whether preliminary or detailed, for schemes that do not mature, shall not be charged from the Departments of the Government of India and local bodies who entrust their works to the NMPA as a standing arrangement. Charges shall be levied at the rate of 1.5 and 5 per cent for the preparation of infructuous preliminary and detailed architectural plans/works estimates respectively from the other bodies who approach NMPA for execution of works occasionally as distinct from standing arrangements.
6. The expenditure shall be monitored by the Finance Department so that the deposited amount at any stage of execution does not fall short of the actual value of executed.

### 2.3 Preparation of Estimates:

The estimate is the probable cost of work. Estimates shall be of two types:

- i. Preliminary Estimates
- ii. Detailed Estimates

Preliminary estimates are necessary to obtain Administrative approval in the case of any work, the emphasis being given to the proposed work. The estimate should include full description of the work, justification, Head of Account/allocation and budget provision of the work proposed to be under taken wherever available along with cumulative value of the estimates already sanctioned against the same Head of Account/allocation.

The detailed estimates are prepared by giving full description of every item of work contemplated to be undertaken and the quantity of each item and should be drawn from relevant detailed drawings, if any. Detailed estimate is essential for giving technical sanction to the proposed work.

Guidelines for Preparation of estimates:

#### 2.3.1 Preliminary Estimate:

Whenever any new construction is undertaken the approximate cost of the proposed work is prepared on the basis of the plinth area of the building/shed or length of road/wharf etc. Or such other methods adopted for ready and rough calculation so as to give preliminary idea of the total likely to be involved in the execution of the work based on prevalent market rates.

Provision for services like sanitary, water-supply, drainage and electrical installations, etc. shall be made on the basis of percentage of cost of the building as considered reasonable according to the specifications adopted.

Plinth areas shall be calculated at the plinth level based on dimensions including the plinth offsets.

While preparing the preliminary estimate care should be taken to keep necessary provision for dismantling/shifting of the existing structures and service facilities, if any coming in the way of execution of the proposed work.

For normal works, preparation of Preliminary Estimate as soon as requisition from the client department is received, Preliminary estimate or Detailed Project Report (DPR) is prepared and submitted to the Client department for obtaining Administrative Approval and budget.

#### 2.3.2 Detailed Estimate

As soon as sanction to the preliminary estimate is received from the competent authority, Detailed Project Report / Detailed Estimate /detailed design and drawings are prepared and approved detailed estimates and to be prepared on the basis of approved scheduled rates of KPWD, NH, KUWS & DB plus Surcharge, if any. Provision for third party inspection for all projects costing above Rs. 10 Cr to be incorporated.

### 2.3.3 Special Rate:

Where rate for an item is not available in the Schedule a rate may be arrived at by analysis allowing 15% towards overhead and profit on prevalent market rate for cost of labour plus material , wherever applicable.

Following points shall be kept in view while establishing a rate based on analysis:

- i) Specifications for materials and workmanship, method of different types of labour and their respective wages.
- ii) Quantity of materials and volume of the work number of different types of labour and their respective wages.
- iii) Location of the work, viz Shore work, river work, under water work etc.
- iv) Distance and mode of transportation in respect of materials tools, plants, equipments etc.
- v) Charge for supply of electricity, water, pneumatic power etc. From the Board of Members resources, if relevant to the particular item of work.
- vi) Overhead expenses and profit of the contractor allowed @ 15% over the cost.

The authority competent to sanction the special rate shall be the Chief Engineer (Civil).

### 2.3.4 Provision for Night work

Additional cost shall be provided in the estimates to cover for night works for night and for working under difficult conditions for which respective Divisional Officers are authorised to take prompt decision on the spot to be subsequently communicated to the higher authority at the earliest opportunity.

The sanction of the competent authority for such estimates will be obtained by the 'Engineer-in-charge' or Divisional Officer and communicate back to the respective sub divisional officers to admit the expenses.

### 2.3.5 Provision for Contingencies:

In addition to the provision for all expenditure which can be foreseen for a work, a provision of contingency shall be kept as follows:

- (a) Estimated cost up to Rs. 1 Crore ..... 5%
- (b) Estimated cost more than Rs. 1 Crore ... 3%, subject to minimum of Rs. 5 Lakhs

This provision is also intended to cover the cost of work-charged establishment for which no provision should be made separately except in the case of annual maintenance estimate where provision is made for such establishment under a separate sub-head of the estimate.

Provision for reimbursement of ESI, PF, GST, Labour Escalation etc., has to be added to the estimate amount for Civil / conservancy / labour deployment works as applicable.

#### 2.3.6 Provision for Supervision Charges:

In the case of estimates for capital works a provision @ 2% on the cost of detailed estimate including provision for contingencies as above should be added to cover the cost of Supervision.

### 2.4 New works:

For new works the proposal shall be forwarded to the competent authority accompanied by the following documents:

- i. Detailed Project Report / Report accompanying the estimate.
- ii. Location / Index Map.
- iii. Abstract estimate of cost with detailed estimate.
- iv. Detailed Drawing
- v. Check list

A check list regarding parameter to be verified right from preparation of tender document till signing of agreement is enclosed as Annexure - 17

Necessary provision for shifting of existing structures as well as services e.g. water mains, drainage, electric/telephone cables etc. should be made in the estimate as necessary.

#### 2.4.1 Scope of Sanction:

The sanction to the estimate must, on all occasions, be looked upon strictly limited to the precise objective covered by the original estimate and no deviation from the original proposal shall be made without approval of the competent authority even though this may not involve any extra expenditure. If at any stage subsequent to the grant of Technical Sanction any material/structural alterations are found necessary, approval of the competent authority should be obtained for such alterations, whether additional expenditure might be involved or not. If additional expenditure is involved sanction for such additional costs should be obtained.

However, the sanctioning officers need not ordinarily refer to higher authority for issuing orders as to any modification necessitate by purely engineering consideration provided the financial power of the authority, who sanctioned the estimate is not exceeded thereby. The higher authority, however, shall be kept informed about the modifications made for their perusal and review.

Any change from the provision of the drawings that becomes necessary during actual execution of the work due to any practical difficulty shall be brought to the notice of the higher authority immediately.

For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The approval or sanction of the higher authority for such a project which consists of such a group of work should not be circumvented by resorting to approval of individual works using the powers of approval or sanction of a lower authority

#### 2.4.2 Revision of Estimates:

Revised estimates are required to be prepared and sanction of the competent authority Obtained especially under the following situations:

- i. When the value of the tender recommended for acceptance exceeds the sanctioned estimated cost by more than 10%.
- ii. When the total amount payable due to execution of excess quantities exceeds the sanctioned estimated cost by more than 10%.

The above limits may be amended / modified from time to time.

In all such cases the reasons for revision shall be stated with justification in the accompanying proposal and a comparative statement showing the up to date progress of the work item wise, shall also be forwarded.

#### 2.4.3 Office Record of Estimates:

A certified copy of the preliminary estimate duly sanctioned by the competent authority shall be forwarded to the concerned sub-divisional officer for his reference and record. The detailed estimate shall be returned / forwarded to the concerned sub-division, duly technically sanctioned for record and reference in his office and further necessary action.

#### 2.4.4 Maintenance of Property Register:

The Board of Members own and maintain a large number of buildings, transit sheds, hospitals, residential quarters, roads, railways etc. In addition to dock structures, jetties and other infrastructural facilities. To ensure that the standard of maintenance is appropriate, regular inspection is essential. Each of the division responsible for maintenance of Board's such properties shall maintain a register showing the details of such asset under its jurisdiction and the frequency of routine maintenance carried out to each of them with particulars regarding creation/acquisition of the asset. Such registers shall be reviewed by the Superintending Engineer every year.

#### 2.4.5 Frequency and interval of Routine maintenance works:

Normally residential quarters may be maintained once in 3 years or at such other intervals specified. Hospitals and other health facilities may be maintained as and when requisitions are received from the appropriate authority, even at closer intervals. At the beginning of the year, a survey of all such assets may be conducted to identify the Items requiring special repairs. Works required ensuring safety of any structure may be given priority. A time-frame for carrying out special repair work may be fixed and a programme for carrying out the annual repairs may be drawn by the divisional officer at the commencement of each year.

The programme for internal repairs should be intimated to occupants/users of the buildings/sheds etc. well in advance requesting them to co-operate with the department in carrying out the work programme smoothly.

#### 2.4.6 Approval of plans by local bodies:

(1) Section 3 of "Government Buildings Act 1899" provides for exemption of Government buildings from the regulation of the municipal bye laws and hence there is no need of approval of Architectural drawings from local bodies in respect of construction of Govt. Buildings. However, the Engineer in charge shall give notice to the local bodies as per provision to Section 3 of the Act before erection of a building

(2) Wherever the above provisions are not applicable, drawings will be prepared by the architectural unit/consultant as the case may be and approvals shall be taken from the respective local bodies.

#### 2.4.7 Indicative time line for project development activities

As per Ministry letter No.DW-14/1/2023-Development Wing dtd. 07-03-2023, the indicative times lines for project development activities shall be as follows :-

- I. For Stage – I, if required (Project Development Stage – not all projects will require each of these activities):

Sl. No	Activity	Time duration (Maximum)
1	Preparation of Feasibility Report	2 Months
2	Preparation of detailed project report	2 Months
3	Approval of Board / SFC/EFC	2 Months
4	Project bidding	2 Months (Call for open tender and submission of bids)
5	Evaluation of Bids	1 Month
6	Award of works	½ Months
	Total	9½ months

II. For Stage – II, if required (Project Execution Stage):

Sl. No	Activity	Time cycle (Maximum) for the Projects Cost
1	Construction, Commissioning / Operation	12 Months (Up to Rs. 100 Cr.)
		18 Months (Up to Rs. 300 Cr.)
		24 Months (Up to Rs. 1000 Cr.)
		36 Months (above Rs. 1000 Cr.)

## 2.5 Execution:

Execution of work may be undertaken in one of the following three ways subject to conditions laid down:

1. Through departmental labours.
2. By inviting Quotations.
3. By inviting tenders.

### 2.5.1 Works undertaken through Departmental labours:

In case where execution of a work is undertaken through departmental labours the supervisory staff assigned on the job shall prepare a muster roll in the prescribed form which shall show the work done.

The particulars of overtime hours worked by departmental workers, if any, shall be recorded in the muster roll as well in which the register of the muster roll clearly.

### 2.5.2 Works undertaken by inviting Quotations and Inviting tenders:

Please refer to “Chapter 3: Contracts” for details.

### 2.5.3 Works within Protected area:

For works within the protected area, contractor shall obtain requisite permits / passes in accordance with the Board’s Rules on prescribed payment. The executing Officers shall forward to the concerned department of the Port all applications of the contractors seeking permit for entry to and exit from the protected area for their men, materials, machineries and transport with their specific recommendations.

A record shall be kept by the supervisory staff assigned on the job for all tools, plant, equipments, materials etc. Brought inside the protected area by the contractor and gate pass shall be issued by the supervisory staff concerned to the contractor on receipt of his request in writing at the time of moving out such tools, plants, equipments etc. from the protected area.

For works continuing round-the-clock, the contractor shall obtain permit for both day and night work from the concerned Engineer in charge.

#### 2.5.4 Commencement of Work:

The issue of "Letter of Acceptance" to be authorised by the competent authority e.g. the CE or Dy. CE or S.E or EE(C) as the case may be by a written order.

Delegation of authority for signing Letter of acceptance shall be as follows :-

- i For works cost of award up to Rs. 10 Lakhs : Executive Engineer (Civil)
- ii Works cost of award more than Rs. 10 lahs : Superintending Engineer up to Rs. 30 Lakhs
- iii Works cost of award more than Rs. 30 lahs : Dy. Chief Engineer up to Rs. 1.00Crore
- iv Works cost of award more than Rs. : Chief Engineer (Civil) 1.00Crore

The date of start of the work shall be 7 days from the date of issue of letter of acceptance for works up to Rs. 1.00Cr and 15 days for works more that Rs. 1.00 Cr. However, no work shall be commenced before signing of contract agreement.

- a. The date of commencement of the obligations under the contract on the parties to a contract i.e., the contract effective date to be a date after the following:
  - i. Date of signing of the contract.
  - ii. Furnishing of performance bond in terms of performance security
  - iii. Receipt of Bank Guarantee for advance payment
- b. No works shall be commenced, or liability incurred in connection with it until:
  - i. Award of work and execution of Contract Agreement.
  - ii. A work order has been issued.

#### 2.5.5 Co-ordination with associated Department/outside Agencies:

The co-ordination upto the stage of preparation of detailed estimate, notice inviting tenders, evaluation of tender, arrangement for obtaining sanction of the tender by the competent authority shall be done by the concerned Executive Engineer / Superintending Engineer. Preparation of the layout plan, working drawings and detailed drawings for the proposed work will be done by the concerned Division responsible for the execution of the project. The working drawings shall indicate in details all relevant particulars including specification references etc. that will be required for smooth and proper completion of the project.

The co-ordination during actual execution of work shall be done by the AEE / AE entrusted with the execution of the work. Joint inspection shall be arranged by the concerned Executive Engineer with his counter parts of other divisions / departments



where works are over-lapping or are inter-connected to ensure that no mistake is made at the time of construction.

**2.5.6 Plantation and Landscaping:**

When the project works has sufficiently advanced plantation and landscaping works, if required, shall be taken up in co-ordination with other Departments / Agencies as necessary to effect overall improvement of the site.

**2.5.7 Supervision and inspection of Works;**

The AEE/AE entrusted with the execution of the work shall be responsible for proper execution of the work through whatever agency the work may be carried out and as such it is incumbent upon the officers concerned to inspect the work frequently to ensure that the works are being executed according to the design and specification laid down for the purpose.

During inspection the higher officers shall issue such detailed instruction to his assistants as may from time to time be necessary and see that all such instructions are satisfactorily complied with.

The Measuring Officer who records and the check measuring officer who test-checks the measurements for an item of work shall be responsible for the dimensional accuracy and general quality of the work he has measured or test-checked. For ensuring proper quality of work they may carry out test as they may consider necessary.

**2.5.8 Supplemental / Additional items**

For items not existing in the Bill of Quantities or substitution to items in the Bill of Quantities, rate payable should be determined by methods given below and in the order given below:

- i. Rates and prices in Contract, if applicable plus escalation as per contract.
- ii. Rates and prices in the Schedule of Rates applicable to the Contract plus ruling percentage.
- iii. Market rates of materials and labor, hire charges of plant and machinery used, plus 10% for overheads and profits of contractor.

The proposal shall be approved by the competent authority as per delegation of powers with finance concurrence.

**2.5.9 Site Order Books:**

The higher officers in the course of their inspection shall point out if any deficiency is noticed by them regarding the procedure of supervision and quality-control

measures adopted by the Supervisors and Engineers on the job and suggest corrective actions which will be subsequently followed in case there no standard procedure.

For all urgent and important works a site order book may be opened and kept and all instruction issued by higher officer of NMPA during site inspection for proper execution of the work shall be entered there in.

**2.5.10 Interruption / Hindrance to the work:**

All works shall be carried out as expeditiously as possible. Any interruption to the work in progress shall be immediately reported to the higher officers and the causes and suggestion as to the probable remedial measures, if any, shall also be intimated. In this regard, necessary entries shall be made immediately in the Project Hindrance form entry system Deployment in NMPA ERP production System. User manual for the same ERP page screen-wise is enclosed as Annexure - 16

**2.5.11 Progress Report:**

Weekly and monthly progress reports in of all plan-capital works shall be sent by the concerned AEE/AEs in the approved proforma to the higher officers concerned. For all capital works monthly progress reports shall be sent at the end of each month.

**2.5.12 Works Register / Materials Register:**

A register should be maintained by concerned AEE / AE wherein relevant particulars regarding all works carried out under the section viz. Name of work, reference of work order, name of the contractor, date of commencement and completion of the work, M.B.No. total cost incurred etc., shall be entered. This registers shall be updated regularly so that all relevant information's regarding the works carried out under them are readily available.

**2.5.13 Injury on Duty:**

In the event of injury or death caused to any departmental / contractor's worker or staff and intimation shall be given to the Dy. Chairman, NMPA, Mangalore and the Head of the Department concerned within 24 hours of such injury or death for onward transmission to the appropriated authority in terms of Workman's Compensation Act, 1923 and Dock Safety Rules and Regulations.

The cause and nature of injury or death shall be investigated and recorded forthwith and in any event within a week from the date of occurrence. The medical department shall participate in such enquiry.

The Engineer in charge (as per Clause 1.1.1) is also responsible for compliance of the provisions of relevant Rules/Regulations/Acts etc. applicable to contract labour.

## 2.6 Procurement of Materials:

Generally all materials required for the works are procured from the Board of Members stores, though under exceptional circumstances some materials may have to be procured by direct purchase by the executing department concerned.

### 2.6.1 Procurement of materials from Stores of the Board of Members:

Materials required for execution of works, wherever such materials are specified to be supplied departmentally, shall be procured by placing indents on the Board of Members Stores Department in the Standard Indent Form. Such indents shall be prepared by the Supervisory Staff concerned and shall be countersigned by the Divisional Officers concerned.

### 2.6.2 Preparation of indents:

The Following points shall be kept in view while preparing indents.

1. An indent shall be written distinctly leaving suitable space in between two items. The delivery point shall be clearly indicated at the appropriate place.
2. In the column provided for quantity in words the indented quantity shall be proceeded by the Unit and followed by the word 'only'. The unit shall be indicated as per code/manual prescribed by the Stores Department.
3. The indenting officer shall be responsible for providing the correct allocation for the materials indented for articles like common fittings and fixtures etc. the approximate period of consumption shall be indicated on the body of the indent.
4. The description and specification of the materials must be complete and self-sufficient in all respect. Whenever necessary a suitable drawing or sketch should be enclosed with the indent.
5. While indenting any material on the basis of accompanying sample, care shall be taken to provide complete description along with a sketch and manufacture's reference if any, whenever practicable.
6. Where material of any specific "brand" or "make" is indenting Officer shall furnish a clear note confirming that similar materials of alternative "brand" or "make" is not acceptable for reasons of suitability.
7. All indents for Restricted Articles shall contain reference of the particulars of administrative sanction.

### 2.6.3 Maintenance of Department Stores:

One of the main reasons for delay in attending to the complaints of mirror nature is non-availability of Stores in time. Since the Board of Members maintain a Stores Department who are responsible for procurement of various materials in bulk quantities against indents from different departments it is generally not necessary to maintain large stock of materials in the departmental stores.

However, an assessment of essential building and plumbing fitting and fixtures shall be made on a routine basis and small departmental stores containing such emergency items may be maintained by the Supervisory staff concerned.

Proper records should be kept of such stores by the Supervisory staff concerned. Assistant Engineer / Asst Exe Engineer and Executive Engineer should make periodical checks. Necessary assistants may be provided for maintaining such stores.

### 2.6.4 Issue of Departmental materials to Contractors:

The materials like water supply fittings, sanitary fittings, cleaning chemicals and materials etc., will be supplied to the contractor as and when required at free of cost. For all materials issued to a contractor, a register has to be maintained by the concerned officers/officials.

### 2.6.5 Disposal of Surplus materials:

Surplus materials in a job may be disposed of by one or more of the following methods:

- 1) These may be returned to the Board of Members Stores when they are in serviceable condition and their values have not depleted. For all such returns detailed forwarding notes shall be made and a stores receipt challans shall be obtained from the receiving section of the stores department for confirmation of credit.
- 2) Surplus materials may be transferred to other works of the same division. In all such cases "materials transfer journals" shall be made and duly receipted in the duplicate copy by the receiving unit. Record of all such transfer shall be kept in the M.Bs/T&P registers specially maintained for such purpose duly countersigned by the concerned officers.
- 3) Surplus materials may be transferred between two divisions with specific approval of both the Divisional Heads. Such "Advice of Transfer" shall be raised in T.E.O. Form and must be duly receipted by the receiving section.

A separate materials consumption statement in receipt of contractor materials for which "Materials Advance" has been paid to him shall be prepared by the Measuring Officer to show item wise consumption of such materials utilised by the contractor for proper execution of the work. Necessary recovery for such consumption shall be made from the on A/C Bills including the Final Bill as necessary.

#### 2.6.6 Theft or Loss of Department materials/Equipment:

All theft or loss of departmental materials and equipment shall be reported to the local Police by the concerned Divisional Officer/AEE immediately on detection through an F.I.R. and copy of the same shall be endorsed to CE (Civil) for information and further necessary action.

In case of theft or loss of departmental materials issued to a contractor, he shall be held responsible for safe custody of such materials and equipment and the contractor shall make good and/ or compensate the Board of Members for any loss/left at a rate not lower than the prevailing market rate at the time of issue/recover, or the issue rate, whichever is higher plus departmental charges at the time of actual recovery.

In such cases the responsibility of reporting the matter to the local Police Station will vest with the contractor. However the contractor shall supply the departmental copies/particulars of such F.I.R at the earliest.

## 2.7 Closure of Contract

### 2.7.1 Substantial Completion certificate:

Certificate of substantial of work may be issued to the works wherein functional requirement of the work is fulfilled. Balance miscellaneous works should be listed and the same should be completed by the contractor with in 7 / 15 / 30 / 60 days depending on the original time period of the work. Failure of the contractor to complete the balance miscellaneous works with in the specified period shall lead to extension of the time period. In the event, the contractor completed the balance miscellaneous works within the specified period the date of substantial completion shall be treated as date of completion of work.

### 2.7.2 Completion of Contract

The contract is not to be treated as completed until a Defects Liability Certificate (DLC) has been issued. There will be only one DLC. It will be issued when the contractor has completed all his obligations under the contract. While making the final payment to the contractor and before releasing the PBG, it should be ensured

that there is nothing outstanding from the contractor, because it would be difficult to retrieve such amounts after releasing the bank guarantee/ final payment. Before the bank guarantee is released a “no claim certificate” may be taken from the contractor in the prescribed format.

#### 2.7.3 Material and Works Reconciliation

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

#### 2.7.4 Reconciliation with the User Department

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

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

#### 2.7.5 Payment Reconciliation

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

- i. LD;
- ii. Price reduction enforced on account of shortfall in standards of Work;
- iii. Variations/ deviations from the scope of the contract;
- iv. Overpayments/ duplicate payments, if any;
- v. Services availed from Procuring Entity and vacation thereof such as accommodation, electricity, water, security, transport, cranes and other machinery, and so on,
- vi. Demurrage, insurance premiums or claims, and so on;
- vii. Works reconciliation;
- viii. Price variations;
- ix. Statutory duties paid on behalf of the contractor by Procuring Entity; and

On satisfactory reconciliation and against a “no claim certificate” from the contractor, the bank guarantee may be released and its acknowledgement taken from the contractor.

**2.7.6 Handing over on Completion:**

On completion of the work, the concerned department should be informed of the same and formal handing over shall be arranged in writing. Reasonable advance information regarding completion of the work shall be given to the concerned department to enable them to make Suitable arrangement in time for taking over the finished work.

**2.7.7 “Completion” and “as built” Drawings:**

When the contract provides for supply of “Completion” or “as built” drawings by the contractor after completion of the work the same shall be obtained from the contractor before release final payment. Copies of one set of such drawings shall be forwarded by the concerned AEE/AE to the Division Office concerned for their record.

**2.7.8 Completion Report:**

For each capital work a report as per proforma given below shall be prepared by the AEE/AE/Divisional Officer on completion of the work. If the nature of the work is such that the work is carried out to extend and/or modernise any existing structure/asset where by the capital value of the original structure/asset is substantially increased, the same shall be reflected in the completion report. The completion report shall contain the following information.

- 1) Name of work.
- 2) Name of Contractor.
- 3) Name of Scheme.
- 4) Location of the asset.
- 5) Contract Value.
- 6) Completion Cost.
- 7) Date of commencement.
- 8) Completion date as per agreement.
- 9) Actual date of Completion.
- 10) Actual date of asset put to use.
- 11) Amount of LD deducted from the work completion cost.
- 12) Types of Asset

(Roads/Bldgs/Warehouses/others (to be specified).

13) Incidental expenditure.

1. Administrative
2. Others (specify)

14) Expected useful life of the asset.

15) Whether it is new asset

(In case of addition/modifications to the existing assets. Provide details of asset.

16) Whether any grant in aid used for the asset (if yes, source of grant and amount)

17) Statement certifying the following aspects:

- a) The work has been completed in all respect as per approved/amended specification.
- b) There is no liability to be adjusted in the work.
- c) There is no outstanding material for adjustment against the work.
- d) "As made drawings" have been prepared/no deviation from the approved drawing has been made, as the case may be.

The completion Report (CR) shall be checked and signed by the AE/AEE/E.E and forwarded to the Finance wing for concurrence and return. One copy of the CR bearing the signature of AE/AEE/E.E. and the designated officer of the Finance Wing shall be forwarded to the CE for Record.

## **2.8 Miscellaneous Notes:**

### **2.8.1 Repairs to Damage caused by outside parties:**

Repairs to any damage of Board of Members properties caused by any outside party shall be undertaken against a requisition from the operating department where the damage has occurred. The requisitioning department is responsible for realisation of the cost of making good the damages from the party causing the damage or for taking legal steps as necessary.

On receipt of information a joint inspection shall be carried out by the Concerned Divisional Officer with his counterpart of the requisitioning department to ascertain the extent of damage and urgency of repairs.

The requisitioning department shall be requested to name the party responsible for causing the damage and bring suitable representative of the party at the time of joint inspection, whenever possible.

The joint inspection report should be prepared indicating the date, time and nature of the accident causing the damage. An estimate for probable cost of repair at the



prevalent market rate plus departmental charges shall be forwarded to the requisitioning department for obtaining necessary administrative approval and further necessary action.

Actual cost of repairs as per final bill after execution of the work including approved departmental charges shall be intimated to the requisitioning department in due course.

In case of emergency arising out of a damage, accidental or otherwise, when the operating department is of the opinion that such damages, if left unrepaired, will cause operational difficulty and request accordingly in writing, the concerned Divisional Officer may take up the repair work pending acceptance of liability of the damage by the party responsible after intimating his Superior Officers regarding the accident and proceed with the repairs only after obtaining sanction from the competent authority.

The requesting department shall, in cases, obtain post facto sanction to the estimate as soon as the same is forwarded to them.

#### 2.8.2 Budget Provision for works:

Revised budgets for the current year and budget provisions for the next financial year are required to be forwarded to the FA&CAO in the month of September every year for obtaining sanction of the Board of Members in respect of all works executed by the department. For all Capital Works any upward revision of the amount provided in respect of a particular work may be done with the approval of the Ministry.

For Revenue Works revision of the amounts may be done as necessary without exceeding the total amount sanctioned under this head as far as practicable.

Budgets for Revenue works are prepared by the respective Divisional officer and for Capital works the same is compiled by the Chief Engineer in consultation with the concerned Dy.CE(C) / SE / Divisional Officer.

#### 2.8.3 Approval for Ready Mix Concrete.

Since, concrete is most likely to be procured from the RMC plant by the contractor, responsibility of the department shall be limited to according approval to the RMC plants. RMC plants shall give an undertaking that design mix proposed to be used for a particular grade of concrete is being supplied by them successfully to other customers during last one month and source of raw material is same.

#### 2.8.4 Their party inspection

As per OM No. DW-14/01/2023-Development Wing dtd. 28-04-2023, all projects costing above Rs. 10 Cr. should be inspected by third party preferably, institutions like, NITs / IITs / NTPCWC etc. Necessary provision shall be made in the estimate towards expenditure for third party inspection.

## CHAPTER - 3 CONTRACTS

### 3.1 Some basic concepts relating to the Indian Contract Act, 1872:

#### 3.1.1 Contract

- a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a "proposal".
- b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a "promise".
- c) The person making the promise is called the "promisor" and the person accepting the proposal is called the "promisee".
- d) Every promise and every set of promises, forming the consideration for each other, is an "agreement".
- e) An agreement enforceable by Law is a contract. According to the Indian Contract Act, 1872 all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object; and are not expressly declared to be void by the said Act.

Nothing contained in the Indian Contract Act shall affect any law in force in India and not expressly repealed by this Act, by which any contract is required to be made in writing or in the presence of witness or any law relating to the registration of documents.

Interpretation: Under the Indian Contract Law, if a contract is violate of other Indian Laws, it is considered void. If a contract becomes void, none of its provisions, including those for arbitration and damages will hold.

Note: From the Engineer's point of view the aim of the contract is to seek best value for the money within the guidelines laid down by the policy decisions, whereas the contractor's objective should be to provide works of specified quality and workmanship within the stipulated cost in due time at a reasonable profit. The Engineer and/or his representative shall have the due authority to monitor and/or expedite the process of payment(s) to the contractor in conformity with the contractual obligations.

### 3.1.2 Void and Voidable Contract:

- a) An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or the others, is a Voidable Contract.
- b) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- c) When time is essence of the contract the contract becomes voidable if the contractor fails to perform his promise at or before the specified time.
- d) When time is not the essence of the contract, the contract does not become voidable by the contractor's failure to perform his promise at or before the specified time.
- e) When time is not essence of the Contract: If the contract provides a clause providing for extension of time under specified contingencies or for payment of fine or penalty for every day or week the work remains unfinished on expiry of the date specified for completion, such clauses would be considered as rendering ineffective, the express terms relating to time being the essence of contract.

### 3.1.3 Persons competent to Execute Contract:

Every contract shall be executed by the chairman on behalf of the Board of Members or Officers delegated with the powers under the Major Port Authorities Act 2021.

No contract which is not made in accordance with the provisions of the Act and the regulations made there-under shall be binding on the Board.

### 3.1.4 Construction of the Agreement:

When a contract is to be ascertained from a series of letters or documents, the whole correspondence must appear to contain a completed contract, the court will not hold the contract to be completed where subsequent letters show that certain terms had not been agreed to. When, however, a contract has in fact been completed and reduced to writing the court is not entitled to consider antecedent acts or correspondence.

#### **INTERPRETATION:**

- a) In case of a difference between written words and figures, the written words prevail as a general rule.

- b) Where an instrument is in a printed form with written additions or alterations, the written words are entitled, in case of a reasonable doubt, as to the meaning of the whole, to have a greater effect attributed to them than the printed words.
- c) In an affirmative sentence the word "or" between two alternative words or clauses means that either one of the two works/clauses may be chosen. But in a negative sentence the word spreads the negative influence over both the alternatives.

### 3.1.5 Distinction between "Penalty" and "Liquidated damages":

A sum fixed by the parties to a contract as the sum payable in case of breach, may be either a genuine pre-estimate of the loss that will be caused to one party if the contract is broken by the other, or it may be in the nature of a threat held over the other party in terrorem, a security to the promisee that the contract will be performed. The former is called "liquidated damage" and becomes payable in full in the event of breach. The latter is called a "Penalty" and the promisee will be entitled only to be indemnified to the extent of his actual loss.

## 3.2 Types of Contract

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

### 3.2.1 Lump sum (Fixed Price) Contract :

This form is used for work in which contractors are required to quote a lump sum fixed price figure for completing the works in accordance with the given designs, specifications and functional requirements. Bidder's price is deemed to include all elements of cost – no arithmetical correction or price adjustments are allowed during evaluation and execution. Lump sum contracts are easy to administer because it is a fixed price for a fixed scope.

Lump sum service contracts should be used mainly for assignments in which the quality, scope and the timing of the Work are clearly defined. Lump sum contracts

may be used where the Works can be defined in their full physical and qualitative characteristics and risk for change in quantity or specification, and unforeseen difficulties and site conditions (for example, hidden foundation problems) are minimal.

### 3.2.2 Item rate (Unit Rate) Contract

For item rate tenders, contractors are required to quote rate for each individual items of work on the basis of Bill of quantities (BOQ) provided by the Procuring Entity in the Bid Documents. Reasonable variations in quantities can be allowed during the execution in terms of the contract. This is the most commonly used contract type for civil works

This type of contract is suitable for all types of major works such as buildings, bridges, culverts, roads, sewer lines, irrigation works, and carries the least risk of uncertainty for the parties

### 3.2.3 Percentage Rate Contract

(i) For percentage rate contract, the contractors are required to quote rate as overall percentage above or below the total estimated cost.

(ii) This type of contract works best when the work does not involve major design process and directions, and simple drawings are sufficient for execution. It saves on the time and effort of detailed design before the procurement process. This type of tender can be used in respect of for small and routine types of original works for which estimates can be made based on available schedule of rates and all repair works e.g. levelling and development works including such works as storm water drainage, water supply and sewer lines.

(iii) Bills for percentage rate contracts shall be prepared at the estimated rates for individual items only and the percentage excess or less shall be added or subtracted from the gross amount of the bill. The payment is made for the measured quantity. Contract provisions are made to determine the price of the items not included in SOR. In the absence of a standard schedule of rates, a project-specific schedule of items and their rates is drawn.

### 3.2.4 Piece Work Contract / Annual Rate Contract

Piece Work Contract is to be used mainly in following cases:

- i. The cases, in which it is necessary to start the work in anticipation of formal acceptance of contract, an agreement on piece work contract may be drawn and the contract may be cancelled as soon as regular contract is signed;
- ii. For running contracts i.e. those for pipes, laying of sewerage etc. quotations are called periodically and a running rate contract is drawn up as a result of those quotations usually for one year. The piece work contract provides for payment of stipulated rates only when it refers to such quantity of time and also stipulates that the procuring entity may put an end to the agreement at his option at any time

### **3.2.5 Engineering, Procurement and Construction (EPC) Contracts**

The Engineering, Procurement and Construction (EPC) (also called 'Design & Build' Contracts) approach relies on assigning the responsibility for investigations, design and construction to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the contractor.

Unlike the normal practice of construction specifications, the technical parameters in the EPC Agreement are based mainly on output specifications / performance standards. Procuring Entity specifies only the core requirements of design and construction of the project that have a bearing on the quality durability, reliability, maintainability and safety of assets and enough room is left for the contractor to add value. The Contractor has full freedom to design and plan the construction schedule using best practices to achieve quality, durability, reliability, maintainability, and safety as specified along with efficiency and economy. Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction are assigned to the Contractor. The Procuring Entity bears the risk for any delays in handing over the land, approvals from local authorities, environment clearances, shifting of utilities and approvals in respect of engineering plans;

### **3.2.6 Public Private Partnership (PPP)**

PPP means an arrangement between a government/ statutory entity/ government owned entity on one side [Sponsoring (PPP) authority – or simply the Authority] and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s - concessionaire) on the other, for the creation and/ or management of

public assets and/ or public services, through investments being made and/ or management being undertaken by the concessionaire, for a specified period of time (concession period) on commercial terms, where there is well defined allocation of risk between the concessionaire and the Authority; and the concessionaire (who is chosen on the basis of a transparent and open competitive bidding), receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the Authority or its representative. For further information, PPP instructions issue by Department of Economic Affairs (DEA), Ministry of Finance from time to time, may be referred.

### 3.3 Bidding Systems

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

#### 3.3.1 Single Stage Bidding System

In single stage bidding, all bids are invited together in a single envelope or in multiple 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;

#### 3.3.2 Single Stage Single Envelope System (1S1E)

Where it is feasible to work out the schedule of quantities and to formulate detailed specifications for Works and capability of contractor isn't critical and value of procurement is low or moderate, the single envelope system may be adopted, where eligibility, technical / commercial and financial details are submitted together in the same envelope. This is the simplest and the quickest bidding system. The lowest responsive priced bid that meets the eligibility criteria, technical and commercial requirements laid down in the bid documents is declared as successful and awarded the contract.



### 3.3.3 Single Stage Two Envelope Systems (1S2E)

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 be followed:

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 quotations along with other financial details are submitted. Both the envelope are to be submitted together in a sealed outer envelope, as it would not be desirable to invite financial bids after opening of techno-commercial bids;

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 tender committee (TC) with reference to parameters prescribed in the tender documents and responsive, eligible and technically compliant bidders are decided;

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;

### 3.3.4 Single Stage Multiple Envelope System (with post-qualification, 1S3E)

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 a clear-cut, fail-pass qualification criteria can be asked to be submitted as the first (additional) envelope in a three envelope 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 him. Strictly speaking, this is not a pre-qualification but a Post-qualification of bidders (as in case of Single Envelope and Two Envelope Bidding). In the first instance on the bid opening date only the

post-qualification envelope (also containing the EMD and other eligibility documents) is opened and evaluated to qualify the responsive bidders who pass the post-qualification. Rest of procedure is same as two envelope system for only qualified bidders. Rest two envelopes of unqualified bidders are returned unopened to the respective bidders by registered acknowledgement due/ reliable courier or any other mode with proof of delivery;

### 3.3.5 Two Stage Bidding with Expression of Interest (Eoi)

There are instances where the Works to be procured are of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely Contractors for such Works. To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring up gradation 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 Contractors in a transparent manner

### 3.3.6 Pre-qualification Bidding (PQB)

In high value contracts or complex technical requirements where capability of source of supply is crucial (for example in construction of complex bridges), for the successful performance of the contract, besides considering techno-commercial suitability, it is necessary to ensure that competition is only among bidders with requisite capabilities matching the challenges of the task. In case bidders with inadequate capability are allowed to compete, the better qualified bidders would be eliminated, since their bid price is likely to be higher commensurate with their higher capability and infrastructure. In such situations a separate stage of PQB bidding system may be considered (or single stage multiple envelope bidding – please refer para 3.3.4 above). In PQB stage, competent qualified tenderers are shortlisted prior to the issue of the bid document exclusively to shortlisted bidders in the second stage by using a Pre-qualification Criterion (PQC).

Pre-qualification Bids (PQB) should meet the norms of transparency, fairness and maintenance of competition. Since PQB system may strain the transparency principle and there is heightened risk of cartelization among shortlisted bidders, PQB should be done only as an exception under specified circumstances. It should not be a routine/ normal mode of procurement of works and an eligibility criteria clause

(post- qualification) as part of single/ two envelope / cover tendering should suffice in normal/ routine situations. PQB bidding as a separate stage is contra-indicated in the circumstances as mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure and its latest amendments. The guidelines mentioned therein shall be followed

### 3.4 Electronic Procurement (e-Procurement)

As per Rule 160 of GFR 2017 it is mandatory to receive all bids through e-procurement portals in respect of all procurements. Tenders for works costing total estimated cost more than Rs. 2.00 lakhs are invited through e-procurement solution developed by NIC i.e. Central Public Procurement Portal (CPPP). The divisions, after approval of the competent authority, shall forward the estimate to centralized tender cell for invitation of tenders in e-procurement mode. The works costing less than Rs. 2.00 lakhs shall be awarded by inviting quotations by respective divisions. The e-procurement solutions meet all the requirements notified by Department of Information Technology under the Guidelines for compliances to Quality requirements of e-procurement systems published on the e-Governance Standards Portal (<http://egovstandards.gov.in>)

### 3.5 Modes of Tendering

It is the primary duty of the engineer to obtain the best return possible for the money spent and the tendering system shall be given a very careful and thoughtful consideration in all cases to evolve the most effective methods of securing competitive rates. The only exceptions made in the general rule is practical consideration to avoid delay in case of works of small value or in case where the works are extremely urgent in nature involving safety of life or Board of Members properties.

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

- i. Open Tender Enquiry (OTE);
- ii. Global Tender Enquiry (GTE);

- iii. Limited Tender Enquiry – LTE
- iv. Single Tender Enquiry (STE) or selection by nomination;
- v. Award of Work through Quotations

#### 3.5.1 Open Tender Enquiry (OTE)

In OTE, 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 should be adopted for procurement values above Rs five lakh. Terms and conditions as mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure, and its latest amendments shall be followed.

#### 3.5.2 Global Tender Enquiry (GTE)

GTE is similar to OTE but, through appropriate advertising and provision for payment in Foreign Currencies through Letter of Credit, it is aimed at inviting the participation of inter-alia foreign firms. The point of balance between VfM and cost/ complexity of procedure is further aggravated as compared to OTE. Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations:

- a) Where required Technology/ specifications/ quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- b) Very high value contracts (procuring entities may adopt threshold limit e.g. above Rs 100 crore) or where 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 where participation of International bidders would enhance value for money.

Terms and conditions as mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure, and its latest amendments shall be followed.

### 3.5.3 Limited Tender Enquiry (LTE)

LTE is a restricted competition procurement, where a preselected list of bidders 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. LTE procedures should be default mode of procurement when the estimated value of procurement is less than Rs. five lakh or when limited numbers of tenderers are known to possess requisite skills, technology and resources, by reason of their high complex or specialized nature, or for works of a secret nature

There need not be any fixed restricted list of contractors, but the list of such contractors shall be as large as possible to ensure that within the limit of restriction competitive bids are possible.

When shortlisting the names of prospective contractors they should be assessed on the following points:

- i. Technical competence including in-house design and engineering facilities available.
- ii. Past experience in similar projects, past performance records in regard to completion in due time as well as within the budget and availability of construction resources for timely completion of the project.
- iii. Current financial status based on the firms Balance Sheet.
- iv. Organisation and project management expertise.
- v. Quality Assurance system followed.
- vi. Current amount of work underway (i.e. the present work load).
- vii. Past history of claims / litigations.
- viii. Troubles or defaults on previous contracts. Due weightage is to be given against each item above. The minimum cut off point for each criterion is to be fixed. The firms whose pre-qualification bids meet the requirements of the project may be short-listed for issue of tender.

Terms and conditions as mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure, and its latest amendments shall be followed.

#### 3.5.4 Single Tender Enquiry (STE) or Selection by Nomination

The selection by direct negotiation/ nomination is called a single tender. This mode may be shortest but since it may provide lesser VfM as compared to LTE/ OTE and may also strain the transparency principle, it should be resorted to only under following conditions:

- a) There is an urgent need for the work and engaging in competitive tendering process would, therefore, be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by procuring entity nor the result of dilatory conduct on its part.
- b) Works that represent a natural continuation of previous work carried out by the firm when considering the limited size of the additional work in relation to the original procurement and the reasonableness of the price it will be cost effective to resort to single source procurement. However, the incremental work should not be more than 25 (twenty-five) percent of the original contract value;
- c) In case of an emergency situation, situations arising after natural disasters, situations where timely completion of the work is of utmost importance subject to the reason for such decision being recorded and approval of the competent authority obtained.
- d) Situations where execution of the work may involve use of proprietary techniques or only one contractor has requisite expertise.
- e) The procurement entity engages in procurement involving national defence or national security and determines that single source procurement is the most appropriate method of procurement.
- f) Under some special circumstances, it may become necessary to select a particular Agency where adequate justification is available for such single-source selection in the context of the overall interest of the Department.

Terms and conditions as mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure, and its latest amendments shall be followed.

#### 3.5.5 Award of Work through Quotations

- a) Use of quotations up to Rs 2.00 lakh in each instance shall be adopted for procurement of readily available goods that are not specially produced to the particular specifications and for which there is an established market.
- b) Procurement entity shall not divide its procurement into separate contracts to bring the amount less than the amount set forth for such purpose.
- c) Procurement entity shall request quotations from as many contractors as practicable but positively from at least three contractors. Each contractor from whom a quotation is requested, shall be informed whether any elements and other than the charges for the goods themselves, such as, transportation and insurance charges, duties and taxes are to be included in the price.
- d) Each contractor or contractor is permitted to give only one price quotation and is not permitted to change its quotation.
- e) Award of work through quotations shall be resorted only in emergent cases and suitable reasons shall be recorded.

#### 3.5.6 Award of Work through Nomination basis.

- a) The Department may assign on nomination basis repair works estimated to cost above Rupees thirty lakh and original works of any value to:
  - i. any Public Sector Undertaking set up by the Central or State Government to carry out civil or electrical works or
  - ii. to any other Central/ State Government organisation/ PSU which may be notified by the Ministry of Urban Development (MoUD) for such purpose after evaluating their financial strength and technical competence.
  - iii. The proposal to award the work to nomination basis shall be approved by the competent Authority as per delegation of powers
  - iv. All works awarded on nomination basis shall be placed before the Board
- b) While awarding the work following points shall be taken into consideration:

- i. PSUs (when bag the contract from the client Department) as a contractor, has to execute the work by functioning like a contractor instead of sub-letting the 100% work on back to back basis.
- ii. Open tenders to be invited for selection of sub-contractors/pre-tender associate(s) as far as possible.
- iii. In case, it is not possible to invite open tenders, selection should be carried out by inviting limited tenders from the approved panel in the following manner.
- iv. Tenders to be opened confidentially by a high level committee to maintain the secrecy of rates, if required. Tender opening register should be maintained in this regard duly signed by the officers opening the tender and kept confidentially. This should be available for perusal when required by audit/ vigilance.
- v. The terms and conditions of the contract of the client especially those pertaining to subletting of works should be strictly adhered to by the PSUs.
- vi. Adequate staff to be deployed by the PSUs to ensure quality in construction etc.
- vii. The record of enlistment / updation of contractor and tender opening register shall be produced to the CTEO as well as audit officials when demanded for scrutiny.

### **3.6 Bid Documents**

#### **3.6.1 Guiding principles in preparation of Bid Document**

The text of the bid document should be self-contained and comprehensive without any ambiguity. All essential information, which a bidder needs for sending responsive bid, should be clearly spelt out in the bidding document in simple language. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. A carefully prepared tender document avoids delays and complaints. Hence, it is worth spending time and effort on this even in cases of urgency.



The standard bid documents would be complete in itself and may be slightly different for various categories of procurements, these must necessarily address the following essential aspects :-

- a) Description of the subject matter of procurement, its specifications including the nature, quantity, time and location where the construction is to be effective, any incidental services to be performed;
- b) Limitation or preference for participation by bidders in terms of the government policies in accordance with Public Procurement.
- c) Earnest money and Security money mode of payment of the same and exemptions if any as per government policies in accordance with Public Procurement.
- d) The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the contractor's eligibility to receive such a government contract). The qualification criteria should take care of the contractor's past performance, experience technical competence, financial strength to handle the contract successfully;
- e) Requirements as to documentary evidence, which must be submitted by contractors or contractors to demonstrate their qualifications;
- f) The procedure for preparation and submission of tenders by the bidders including date, time and place for obtaining, submitting and opening of the bids;
- g) Suitable provisions for enabling a bidder to seek clarification/ question the bidding conditions, bidding process and/ or rejection of its bid. For works costing more Rs. 1.00 Cr the name and contact details of IEM form of pre-contract Integrity Pact agreement shall be incorporated. The copy of tender document after publication and copy of the work order shall be communicated to IEM.
- h) Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/ highest as the case may be) bidder should be clearly indicated in the bidding documents;
- i) Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; and

- j) Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws;
- k) The names, designations and addresses of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from contractors or contractors in connection with the procurement proceedings;
- l) When the work site is within the protected area of the docks or elsewhere, the contractor shall be apprised of the fact by a suitable clause in the SCC. His attention shall also be drawn to the existing regulations regarding restriction of entry and exit of men and materials
- m) Any formalities that will be required once a tender has been accepted for procurement contract to enter into force
- n) Provision for third party inspection for all projects costing above Rs. 10 Cr to be incorporated.

### 3.6.2 Standard Bid Documents

The bid documents must be based on relevant Standard Bidding Documents for the Type of Contract (Contract for deployment of labour or Contract for other civil construction / maintenance work Etc); Type rate (Percentage rate / Item Rate) Estimated Value range, Bidding System (Single Envelope / Two Envelope / Pre Qualification Bidding) etc. To ensure uniformity, the standard provisions in most sections of the Standard Bid Document are used unaltered. Any modification to suit a unique requirement of the specific procurement in these documents is done through variable sections such as Appendix to Instructions to Bidders or Special Conditions of Contract. The contents of Bid Documents would therefore vary, but will generally comprise the following (some of these sections may be named or organised differently in some organisations):

Volume I	Section I	Notice Inviting Tenders Instructions to Tenderers Annexure (1 to 13)
	Section II	Form of Agreement
	Section III	Conditions of Contract: Part A - E: General Conditions Conditions of Contract : Part F: Special Conditions Contract Data

		Form of Securities (A & B) Appendix – I and Appendix - II
Volume II	Section IV	Technical Specifications
	Section V	Drawings
Volume III	Section VI	Preamble Bill of Quantities For of tender
	Section VII	Schedules (A & B)

### 3.6.3 Special Conditions of Contract (SCC):

Any additions, deletions, or variations to the GCC felt necessary for a particular project shall be done by an appropriate entry in the SCC. Conditions of a special nature and project specific conditions shall be rationally incorporated. Special conditions shall be approved by the authority competent to accept the tender. While drafting SCC, the circumstances warranting them shall be duly considered, including but not limited to the following:

- i. Where the wording in GCC specifically requires that further information is to be included in SCC and the conditions would not be complete without that information;
- ii. Where the wording in GCC indicates that supplementary information may be included in SCC, but the conditions would still be complete without that information;
- iii. Where the type, circumstances or locality of the works requires additional clauses or sub clauses.
- iv. Where the laws of the country, or exceptional circumstances, necessitate alterations in GCC. Such alterations are affected by stating in SCC that a particular clause, or part of a clause in GCC, is deleted and giving the substitute clause or part, as applicable.

### 3.7 Preparation of Tender Document:

Before tenders for a work are invited a detailed estimate showing the quantities, rates and amounts of various items of works and also the specifications to be adopted shall be prepared and sanctioned.

In case of urgent works when there is no time to prepare a comprehensive estimate, approximate quantities and rates for the items shall be worked out before the tenders are

invited for the purposes of comparison. Tender documents comprising the followings shall be prepared and approved by the concerned Head of the division for all quotations and by the CE for all open / limited tenders:

1. Notice inviting tender (NIT)
2. Form of tender to be used along with the set of conditions to be followed.
3. Schedule of quantities of work.
4. The set of drawings or sketches relevant for proper execution of the work.
5. Detailed specifications which shall be followed to execute the work.

Generally splitting of work for the purpose of inviting tender and bringing it within the financial power/limit of the Tender Inviting Authority should not be done. However, due to administrative convenience and expediency, works may be split up and tenders invited separately after obtaining due concurrence of the competent authority. Accord of technical sanction and call for tender for component parts of a project, the amount of which is provided under a distinct sub-head in the preliminary estimate will not amount to splitting of the work and can be dealt with by the respective divisions as per powers delegated. The guiding consideration for splitting up of a tender shall be expeditious completion and economy.

All NITs shall be serially numbered and proper. The NIT shall only be issued after the authority competent to invite the tender has approved the draft tender. Tender documents shall be carefully prepared and thoroughly scrutinised for any typographical errors. Use of the symbols "%" & "%o" in the schedule of quantities accompanying the NIT is prohibited and the figures "100" & "1000" shall be written as "per 100 sqm." and not as "% sqm." and "per 1000 sqmm" and not as "%o sqm".

In case of lump sum tender, detailed drawings and specifications duly authenticated by the competent authority shall form part of the NIT. The cost of various items forming part of the sanctioned estimate of the work shall be correctly assessed with reference to schedule of rates or on the basis of detailed analysis where such rates are not available in the schedule of rates. This is necessary for evaluating reasonability of the lumpsum tender. The NIT papers are important documents of tenders on which subsequent negotiations and agreements with the contractors are based. It is therefore, necessary that each page and corrections slips, if any, shall be numbered and signed by the competent authority as a token of his approval so that there is no chance of tempering with such documents. Mere approval of the forwarding letter will not serve the purpose. All corrections on the tender documents shall be initialled by the assigned officer and approved by the competent authority.

The schedule of quantities attached to the tender document must contain a column for 'amount' after the 'rate' and the contractors must calculate amount of each item and enter it in the respective column. In case of e-tendering the prescribed format available in e-tender portal shall be used.

The NIT shall stipulate a logical time frame for completion of the work.

The tender documents shall include the following stipulations:

1. Tenders without Earnest Money Deposit or documentary evidence for exemption of Earnest Money Deposit shall be liable to be rejected.
2. For two cover system tenders, techno commercial conditions bids will be opened first and the price- bids will be opened at a later date at the discretion of the competent authority.
3. Tenders received after due date and time specified will not be accepted.
4. Telegraphic offers will not be accepted.
5. The NIT shall form a part of the contract.
6. If after opening the tender it is found to be incomplete the whole tender shall be rejected.
7. The tenderer or his authorized representative with proper letter of authority may remain present at the time of opening of the bids, if they so desire.
8. The Engineer reserves the right to reject any or all the tenders without assigning any reason therefore and is also not bound to accept the lowest tender.
9. The tenderers will be required to produce valid credentials in their bid document
10. For Conservancy works or works pertains to deployment of manpower where the estimate is prepared for bare minimum cost of the work without contractors profit and overhead charges, following clause shall be incorporated in the tender as per Resolution No.190/2020-21 of Port Authority Board:-
  - a. The estimated amount put to tender is the bare minimum cost of work. If a firm quotes less than or equal to estimated cost put to tender, the bid will be considered as the bid with NIL charges / NIL Consideration, such bids shall be treated as unresponsive and will not be considered for evaluation.
  - b. In case if, two or more bidder quote same minimum charges / minimum % and tie occurs, the successful bidder would be finalized by drawing the lottery with prior intimation to the bidders whose bids are tie, in presence of eligible bidders and Tender Committee Members.

11. The draft tender document shall be forwarded to concerned Engineering of the work executing division for verification of special conditions of contract, scope of work, technical specification and period of contract, before submitting for approval.

### 3.7.1 Minimum Eligibility Criteria:

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

The Minimum Eligibility criteria in in normal / routine situations for Single Stage Two Envelope Systems (1S2E) shall be as follows :-

1. Successfully completed or substantially completed similar works during last seven years ending last day of month previous to the one in which applications are invited should be either of the following: -
  - 1.1 Three similar completed works each costing not less than the amount equal to 40(forty) percent of the estimated cost; or
  - 1.2 Two similar completed works each costing not less than the amount equal to 50 (fifty) percent of the estimated cost; or
  - 1.3 One similar completed work costing not less than the amount equal to 80 (eighty) percent of the estimated cost; and
2. Definition of "similar work" should be clearly defined and approved by the Competent authority along with estimate.
3. The applicant should also have executed the minimum 50% quantity the of the key element of similar work (e.g. dredging, piling, earthworks, concrete road

work, asphalt works, building works, painting etc.) in the work / works submitted for eligible assignment.

4. Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the estimated cost. However, considering the time required for closing of annual accounts, the financial turnover of the previous year shall be considered from the month of September onwards every year.
5. The financial capacity of bidders would be evaluated considering the works in hand at NMPA on the due date of submission of bid. The port would deduct the turnover required for execution of work in hand at NMPA from the average financial turnover of the bidder. The remaining net financial turnover of the bidder will be considered for eligibility criteria. The financial capacity to be 3.33 times of the average financial turnover of last three years of the bidder minus works in hand at NMPA (As approved by the Board, in Resolution No. 65/2020-21 of Port Authority Board)
6. Bidder should have valid registration with Employees State Insurance Corporation (ESIC) and Employees Provident Fund organization under 'EPF and Miscellaneous Provisions Act, 1952'
7. For Pre-qualification Criterion (PQC) for Pre-qualification bidding (ref. Clause 3.3.6) the guidelines mentioned in Manual for Procurement of Works (Updated June, 2022) published by Government of India Ministry of Finance Department of Expenditure and its latest amendments shall be followed with approval of the Competent Authority.

### 3.7.2 Disqualification

Even if an applicant meets the eligibility criteria (Please refer Para 4.5 below) and PQC, he shall be subject to disqualification if he or any of the constituent partners is found to have:

1. made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/ or;
2. Records of poor performance during the last five years, as on the date of application, such as abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the contractor, inordinate delays in completion, consistent history of litigation resulting in awards against the

contractor or any of the constituents, or financial failure due to bankruptcy, and so on. The rescission of a contract of venture JV on account of reasons other than non- performance, such as the most experienced partner (major partner) of JV pulling out;

3. On account of currency of debarment by any Government agency.  
Such disqualification shall be made with the approval of the competent authority.

### 3.7.3 List of works in progress:

The tender documents shall include a condition to bind the intending tenderer to submit a list of his works in prescribed format, if any, which are in progress under different divisions of Civil Engineering department at the time of his submitting the tender, containing the following informations:

- (a) Name of works
- (b) Name of respective divisions under which the works are being executed.
- (c) Value of each work.
- (d) Status of progress of each work.

### 3.7.4 Particulars to be furnished in the Notice Inviting Tenders:

Notice for NIT shall invariably include, the following informations, besides others

1. Name of the work.
2. Location of the work.
3. Estimated value of the work.
4. Amount of Earnest Money to be deposited and the form/mode in which the EMD should be furnished.
5. Cost of tender documents (which shall be non- refundable)
6. Validity period of the offer.
7. Period of completion of the work.
8. Place where the tender documents will be available for purchase.
9. Mode of payment of cost of tender documents.
10. Last date and time upto which tender documents will be downloaded.
11. Last date and time of receipt of tenders
12. The place and time where the completed tender documents are to be submitted and opened, subsequently.



### 3.7.5 Earnest Money:

#### Rate of Earnest Money Deposit

##### i. Works Contract

Sl. No.	Estimated Cost of Work	Rate of EMD
1	For works costing up to Rs. 10 Crores	2% of the estimated cost
2	For works Costing more than Rs. 10 Crores	Rs. 20 lakhs plus 1% of the estimated in excess of Rs. 10 Crores.
3	Petty works costing Rs. 5,000 or less	Executive Engineer at his discretion, dispense with the conditions for calling for earnest money.

##### ii. Consultancy Contracts

Bid security @ Rs. 25,000 (Rupees twenty five thousand only) for every Rs. 100 Crore (Rupees one hundred crore only) of the indicative cost of the project, subject to a minimum of Rs. 25,000/- (Rupees twenty five thousand only) and maximum Rs. 2,00,000 (Rupees two lakhs only)

The Bid shall be accompanied by the Bid Security or documentary evidence for exemption of Bid Security. The tender without Bid Security or documentary evidence for exemption shall be treated invalid. The benefit of Exemption of EMD to all Micro and Small Enterprises (MSE) will be allowed. Tenderer Shall upload with their offer, the proof of their being MSE registered with District Industries Center (DIC) or Khadhi and Village Industries Commission or Khadhi and Industries board (KVIV) or Coir board or National Small Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udhog Aadhar Memorandum or Udyam Registration Certificate or any other body specified by Ministry of MSME will be considered.

In case bidder claim exception from payment of EMD, bid security declaration in prescribed format shall be obtained from such bidders. In the event of Bidder withdrawing his Bid before the expiry of tender validity period of 90 days from the last date for online bid submission, the tender shall be cancelled and the bidder shall be disqualified from bidding for any contract with New Mangalore Port Authority for a period of 2 (two) years starting from the date of notification from the Employer.

The Bid Security may be obtained in the form of Insurance Surety Bonds, account payee demand draft, fixed deposit receipt, banker's cheque or payment online in an

acceptable form, safeguarding the purchaser's interest in all respects. The Bid Security shall be in the form of Bank Guarantee from any of the Commercial Banks, when the value of bid security is more than Rs. 5.00 lakhs. The bid security shall remain valid for a period of 45 (forty- five) days beyond the final bid validity period

\*NOTE:- If any orders issued by Ministry/ Competent authority time to time for reduction or exemption of EMD or Performance security, the same will be implanted accordingly.

The Earnest Money Deposit of unsuccessful bidder, if deposited in cash, shall be returned without interest by RTGS/NEFT on finalisation of contract. The Earnest Money Deposit of the successful bidder shall be refunded (without interest) after Contractor has signed the agreement and furnished required performance security.

The Bid Security of a successful bidder will be forfeited, if deposited in cash or if the bidder is submitted bid security declaration, the bidder shall be disqualified from bidding for any contract with New Mangalore Port Authority for a period of 2 (two) years starting from the date of notification from the Employer in the following cases:

- a) If the bidder withdraws his Tender during the period of bid validity.
- b) In case of a successful tenderer fails
  - i. to commence the work, apart forfeiture of other claims
  - ii. Within the specified time limit to sign the Agreement or furnish the required Performance Security. In the event of forfeiting the EMD / SD / LD and while imposing penalty GST as applicable will be collected.

### 3.7.6 Preference to Make in India

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 2017. 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.
- 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) When 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:
  - i. Among all qualified bids, the lowest bid will be termed as L1. If L1 is 'Class-I local supplier', the contract for full quantity will be awarded to L1.
  - ii. If L1 bid is not a 'Class-I local supplier', 50 (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:
  - i. 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.

- ii. 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.
  - iii. 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.
  - iv. "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-paragraphs 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. Government E-marketplace: In respect of procurement through the Government E- marketplace (GeM) shall, as far as possible, specifically mark the items which meet the minimum local content while registering the item for display, and shall, wherever feasible, make provision for automated comparison with purchase preference and without purchase preference and for obtaining consent of the local supplier in those cases where purchase preference is to be exercised.
- viii. 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 which is empowered to look into procurement-related complaints relating to the procuring entity.
  - d) 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.
  - e) Nodal Ministries and procuring entities may prescribe fees for such complaints.

- f) 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.
- g) A supplier who has been debarred by any procuring entity for violation of the Order shall not be eligible for preference under the Order for procurement by any other procuring entity for the duration of the debarment. The debarment for such other procuring entities shall take effect prospectively from the date on which it comes to the notice of other procurement entities, in the manner prescribed under paragraph below :-
- h) The Department of Expenditure shall issue suitable instructions for the effective and smooth operation of this process, so that:
  - i. The fact and duration of debarment for violation of the Order by any procuring entity are promptly brought to the notice of the Member-Convenor of the Standing Committee and the Department of Expenditure through the concerned Ministry / Department or in some other manner;
  - ii. on a periodical basis such cases are consolidated and a centralized list or decentralized lists of such suppliers with the period of debarment is maintained and displayed on website(s);
  - iii. in respect of procuring entities other than the one which has carried out the debarment, the debarment takes effect prospectively from the date of upload on the website(s) in the such a manner that ongoing procurements are not disrupted.
- ix. Specifications in Tenders and other procurement solicitations:
  - a) Every procuring entity shall ensure that the eligibility conditions in respect of previous experience fixed in any tender or solicitation do not require proof of supply in other countries or proof of exports.
  - b) Procuring entities shall endeavour to see that eligibility conditions, including on matters like turnover, production capability and financial strength do not result in unreasonable exclusion of 'Class-I local supplier'/ 'Class-II local



supplier' who would otherwise be eligible, beyond what is essential for ensuring quality or creditworthiness of the supplier.

- c) Procuring entities shall review all existing eligibility norms and conditions with reference to sub-paragraphs (viii) (a) and (b) above.
- d) Reciprocity Clause
  1. 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.
  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 Government procurement in India for all items related to that nodal Ministry/ Department, 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 the Central Government procuring entities stated in (1) above. All purchases on GeM shall also necessarily have the above provisions for items identified by nodal Ministry/ Department.
  4. State Governments should be encouraged to incorporate similar provisions in their respective tenders.
  5. 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) “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.”
- x. 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.
- xi. Assessment of supply base by Nodal Ministries: The Nodal Ministry 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.
- xii. 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.
- xiii. 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 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. Procuring entities, 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. The procuring Ministries/Departments shall also make special provisions for exempting such joint ventures from meeting the stipulated minimum local content requirement, which shall be increased in a phased manner.
- xiv. 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,
1. reduce the minimum local content below the prescribed level; or
  2. reduce the margin of purchase preference below 20 (twenty) percent; or
  3. 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.

- xv. Directions to Government companies: In respect of Government companies and other procuring entities not governed by the General Financial Rules, the administrative Ministry or Department shall issue policy directions requiring compliance with this Order.

- xvi. Standing Committee. A standing committee is hereby constituted with the following membership:
- xvii. Secretary, Department for Promotion of Industry and Internal Trade-Chairman  
Secretary, Commerce-Member
- xviii. Secretary, Ministry of Electronics and Information Technology-Member  
Joint Secretary (Public Procurement), Department of Expenditure-Member  
Joint Secretary (DPIIT)-Member-Convenor
- xix. 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.
- xx. 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.
- xxi. Ministries having existing policies: Where any Ministry or Department has its own policy for preference to local content approved by the Cabinet after 1st January 2015, such policies will prevail over the provisions of the Order. All other existing orders on preference to local content shall be reviewed by the Nodal Ministries and revised as needed to conform to this Order, within two months of the issue of this Order.
- xxii. Transitional provision: The Order shall not apply to any tender or procurement for which notice inviting tender or other form of procurement solicitation has been issued before the issue of this Order.(Rule 153 of GFR 2017)

Note : As the specification for materials in the subject work do not envisage procurement from outside India, all the bidders shall be considered class I local suppliers. A Format for Self-Certification under Preference to “MAKE IN INDIA” Policy shall be incorporated in the tender document for compliance in this regard.

#### 3.7.7 Publicity to Tenders:

It is mandatory to publish the tender enquiries, corrigenda thereon on the Central Public Procurement Portal. If the department has its own website/ e-Procurement

Portal, it should also publish all its advertised tender enquiries on such website/ Portal also. GFR 2017 has dispensed with advertisements in Newspapers. However, in exceptional circumstances, procuring entities may issue the advertisement in newspapers as deemed fit. Such advertisement should also consist of the link of website from where the detailed advertisement and bidding document can be seen and downloaded. Individual cases where confidentiality is required, for reasons of national security, would be exempted from the mandatory e-publishing requirement. The decision to exempt any case on the said grounds should be approved by the competent authority with the concurrence of the Financial Advisor.

To ensure competition, attention of all likely tenderers, for example, enlisted vendors, past contractors and other known potential contractors, should be invited to the NIT through email/ SMSs/ letters.

#### 3.7.8 Time limit for Publicity of Tender:

In order to encourage keen competition, sufficient time shall be allowed between the date of publication of the NIT for tender(s) and the date of submission of the same. The following time limits between the date of call for the tenders and the date of opening shall be generally allowed:

- a. For Quotations - 7 days.
- b. For Limited tenders – 14 days.
- c. For Open tenders - 21 days.

The above time limit shall not apply to global tenders and other high valued specialised jobs where time limit shall be fixed by the CE(Civil).

In case the time-limit is to be extended the same should be done with the approval of the Chief Engineer (Civil) and with due notification in the website and by displaying the notice on the Notice Boards.

In case of tender for urgent works, the time limit shall be reduced with approval of the competent authority.

#### 3.7.9 Bid Validity

A bid shall remain valid for the period 90 (ninety) days for OTE and 120 (one hundred and twenty) days for GTE. In exceptional circumstances, the consent of the bidder may be requested in writing for an extension to the period of bid validity. Such

requests should preferably be made much before the expiry of the bid validity. The bid security provided shall also be suitably extended. A bidder accepting the request and granting extension shall not be permitted to modify his bid.

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

#### 3.7.10 Sale of Tender Documents:

The tender documents shall be prepared and uploaded in the website on publication of NIT. It is the responsibility of the Engineer to see that the tender documents are made available for downloading.

#### 3.7.11 Scale of charges for sale of Tender Documents:

The following shall be the scale of charges for the sale of tender forms to the intending tenderers:-

1. Works costing up to Rs. 1 lakh. Rs.150
2. Works costing between Rs.1 lakh and Rs.50 lakhs ..... Rs.500
3. Works costing more than Rs.50 lakhs and up to Rs.2crores.... Rs.1,000
4. Work costing above Rs.2 crores....Rs.1,500
5. For Consultancy contract .... Rs. 1,000

Approved in Port Authority Board vide Resolution no. 08/2018-19 dated 07.06.2018 in the meeting held on 25.05.2018. The applicable taxes on cost of tender document shall be collected. Authorities competent to approve NITs have got the discretion to add to the prices, mentioned above, any additional cost of drawings to be supplied along with tender of documents depending on the cost/labour actually involved in their preparation. In case it is not possible to supply to the tenderers full set of drawings with each set of tender documents for the purpose of bidding, relevant plans and drawings shall be kept in the divisional office /office of CE for study by the tenderers. Tender document can be downloaded from NMPA website <http://www.newmangaloreport.gov.in>, [www.tender.gov.in](http://www.tender.gov.in) & <https://www.eprocure.gov.in/eprocure/app>. The cost of tender documents 560/- (Non-refundable) to paid by NEFT. The details of payment shall be attached to the e-tender. Tenderer shall have to pay the prescribed cost of tender by NEFT in favour of F.A. & C.A.O., NMPA

### 3.7.12 EPF & ESI Compliances :

The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, regulations and bye-laws including all statutory amendments and re-enactment of State or Central Govt. and other local authorities and any other enactments and act that may be passed in future either by the State or the Central Govt. or local authority, including Indian Workmen's Compensation Act, Contract Labour (Regulation And Abolition) Act 1970 and Equal Remuneration Act 1976, Employees' State Insurance Act, 1948, Factories Act, Minimum Wages Act, Provident Fund Regulations. Employees' Provident Fund Act and schemes made under the same Act, Health and Sanitary Arrangements for Workmen, Insurance and other benefits and shall keep the Employer indemnified in case any action is commenced for contravention by the Contractor. If the Employer is caused to pay or reimburse any amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated here-forth on the part of the Contractor, the Engineer shall have the right to recover from the Contractor any sum required estimated to be required for making good the loss or damage suffered by the Employer. The Tenderers must have valid ESI and PF registration and shall maintain the records prescribed under ESI Regulations and PF Act & make the contribution towards ESI and PF in respect of persons employed by the Contractor. These contributions on the part of Employer paid by the contractor shall be reimbursed by the Engineer –in –charge to the contractor on actual basis. The contractor shall make available such records for inspection by ESI and PF authorities during inspection and furnish the copies of such records to the employer regularly. The EPF and ESI contribution on the part of the employer in respect of this contract shall be paid by the contractor. These contributions on the part of Employer paid by the contractor shall be reimbursed by the Engineer –in –charge to the contractor on actual basis.

### 3.8 Principles to be observed in framing Contract Agreement:

The basic principles to be kept in view by those who are authorized to enter into contracts or agreement are as below:-

- i. The terms of contract must be precise and defined and there should be no room for ambiguity and the matters to be agreed upon should include in detail the followings:-
- ii. What the contractors is to do, when, where and to whose satisfaction it is to be done.

- iii. What the Board of Members are to do and on what terms.
- iv. What payment is to be made, what is to be covered, to whom it is to be made and the method and basis of making it.
- v. Responsibility of the contractor in respect of technical supervision, care of Board of Members properties and workmen, Provisions of Contract Labour (Regulation and Abolition) Act, 1970 shall be followed wherever necessary.
- vi. The terms on which variations and modification, if any, are to be permitted and the authority competent to assess them and the situation and basis of such assessments.
- vii. The measures to be adopted in the event of a breach of contract by either party and the correct methods of and the ground for determination thereof.
- viii. The method of settling dispute.
- ix. Standard forms of contract shall be adopted wherever possible, terms being subject to adequate prior scrutiny.
- x. Terms of contract once entered should not be materially varied except in consultation with the competent legal and financial authority.
- xi. No contract involving an uncertain or indefinite liability or any conditions of unusual character should be entered into without previous consent of the competent legal and financial authority.
- xii. Power to retain and 'set off' all claims and counter claims of Board of Members whether arising out of a particular contractor or out of any other transaction or claims whatsoever against the contract should be secured for the Board of Members.

### 3.9 Procedure for Receiving and Opening of tenders:

#### 3.9.1 Procedure for Receiving and Opening of E-Tenders:

Tender document including quoted bid price have to be submitted online only through CPP Portal before deadline for online submission of bid. For evaluation purpose the uploaded offer documents will be treated as authentic and final. The completed bid shall be submitted in the electronic form by the date and time mentioned in NIT only through CPP e-portal.

The Employer may extend the deadline for submission of bids by issuing an amendment, in which case all rights and obligations of the Employer and the bidders



previously subject to the original deadline will thereafter be subject to the deadline as extended.

Price should be quoted in CPP e-portal. Any indication of 'Quoted price' in the online technical bid documents shall lead to rejection of the bid outright. For evaluation purpose the uploaded offer documents will be treated as authentic and final. No hard copy shall be submitted for reference purpose. The bid submitted through e-tendering mode only will be taken up for the purpose for evaluation.

The uploaded Port Tender Document will be treated as authentic tender and if any discrepancy is noticed at any stage between the Port's tender document and the one submitted/uploaded by the tenderer, the conditions mentioned in the Port's uploaded document shall prevail. Besides, the tenderer shall be liable for legal action for the lapses

On the due date and time as specified, the Employer will first open Techno Commercial bids of all bids received online in presence of the Bidders or their representatives who choose to attend. In the event of specified date for bid opening is declared as holiday by the Employer, the bid will be opened at the appointed time and location on the next working day.

In the first instance the Techno Commercial Bid containing the RTGS/NEFT payment details of EMD & Cost of tender document or documentary evidence for exemption of EMD will be verified. If EMD and Tender Fee is in line with the Tender Condition there after the Techno Commercial Bid will be considered for evaluation. If any Bid contains any deviation from the Bids documents and / or if the same does not contains Bid security in the manner prescribed in the Bid documents, then that Bid will be rejected and the Bidder informed accordingly on finalization of tender.

The date and time of opening of price bid (cover-II) shall be intimated to the qualified bidders based on the evaluation of the technical bid. The price bid (cover-II) of such eligible bidders shall be opened on the specified date and time. If bidder withdraws his tender after opening of price bid the bidder will be disqualified for participating in NMPA tender for a period of two years.

### **3.9.2 Procedure for Receiving and Opening of Manual Tenders:**

A tender opening register with serially numbered pages shall be maintained at each tender opening office. Value of each tender as quoted by the respective tenderer

shall be entered in the register at the appropriate column. The signature of the tenderers or their authorized representatives present shall also be obtained on the same page after opening of all the offers. The tenders shall be opened at specified date and time by nominated officer. All tenderers who intend to be present at the time of opening of the tender may do so either personally or through their duly authorised representatives. For all tenders one officer from Financial Dept. shall also be present physically in manual tendered and virtually in case of E-tender

The tender opening officers should invariably check whether the required Earnest Money as applicable as per G.C.C. has been enclosed with the Tender. A suitable entry shall be made by them at the bottom of the front page of the tender as well as in the appropriate column of the Tender Opening Register under initial with date. In case of Manual tender, all pages of the tender documents are to be signed by the tenderer over his official seal before submission of his tender. In case of any omissions, the Tender Opening Officers shall record the fact at the bottom of the relevant pages under their dated initials.

Any omission including rates quoted either in figures or in words or both shall be recorded on the same page under initial of the Tender Opening Officers. If some item is not quoted, a line shall be drawn in the blank space with the comments 'left blank' duly signed by the Tender Opening Officers.

The Tender Opening Officers shall check that the tenderer has quoted all the rates in words including paise to avoid chances of tampering of rates and if the tenderers has failed to do so, the Tender Opening Officers shall themselves write the rates in words at the time of opening the tenders and put their initials with date.

All corrections, conditions, additions, alterations and over-writings including use of different inks in the Bill of quantities/rates, Form of tender, schedule of materials to be issued and specifications etc. are to be encircled in red ink by tender opening officers and shall be numbered serially in each page under initial with date. In case of a number of corrections in any rate either in words or in figures or both, the no. of corrections marked shall indicate the corrections serially i.e. in case of, say, 3 (three) corrections in rates of any one item each of these corrections shall be allotted independent numbers serially and not one number to represent all 3 (three) corrections. In case the corrections are not legible the officers opening the tender shall record the fact under their signature. The total number of

corrections/overwriting/omissions etc. must be clearly mentioned at the bottom of the relevant page of the tender document and properly attested by the tender opening officer with date.

The Tender Opening Officer shall specifically record in the last page of the Bill of Quantities/Rates as well as in the appropriate column of the Tender Opening Register whether samples have been supplied along with the tender if original call for tenders provides for such supply.

Any discrepancy noticed between the rate quoted in words and in figures and the corresponding amount shall be recorded by the Tender Opening Officers on the same page. Such variations and omissions, if any, shall be brought to the notice of the tenderers or their authorised representatives, if present, immediately on detection.

Percentage quoted at par/above/below in respect of tenders where rates have been indicated in the BOQ shall be read out to the attending tenderers or their authorised representatives as far as practicable. In case of item rate tenders, the total amount worked out by different tenderers shall be read out. The rates of individual items quoted by the tenderers may be read out at the discretion of the Tender Opening Officers if requested by the tenderers present.

All tenderers who are willing to do so, shall be allowed to be present at the time of opening of the tenders personally or through their duly authorized representatives.

In case of E-tender the technical bid document shall be downloaded from e-portal and evaluated as per tender conditions.

The tenderers are not allowed to make any modification of their offers after the specified date and time of receipt of the tenders. When the tenders are under examination, no tenderer shall be allowed to make any enquiries or canvass regarding acceptance of their tenders before evaluation is completed.

### 3.10 "Delayed" and "Late" Tenders:

The following procedure shall be scrupulously followed at the time of opening of tenders in respect of 'delayed' and 'late' tenders. 'Delayed' tenders i.e. tender received before the specified date and time of opening but after the specified date and time of receipt shall not be opened.

Similarly 'late' tenders i.e. tenders received after the specified date and time of opening shall not be opened by tender opening officers.

Both 'delayed' and 'late' tenders shall be marked distinctly on the unopened cover by the concerned Tender Opening Officers. A suitable remark in regard to both 'delayed' and 'late' tenders shall be made in the tender registers as well as in the comparative statement.

### 3.11 Processing of Tender (Evaluation and acceptance)

- i. After opening of tender, the technical bid documents are downloaded for e-tender portal, arrangement shall be made by the office where the tender has been invited for checking of the tenders which include arithmetical check, scrutiny of any conditions which may have financial implication with their impact on the total values of their tenders and preparation of a comprehensive comparative statement.
- ii. Tenders relating to major works value of which is above Rs.2 lakhs shall be scrutinized and evaluated by the Tender Committee appointed by the competent authority. For works, estimated put tender cost is less than Rs. 2.00 Lakhs, the Procuring Entity shall prepare a comparative statement and submit the proposal for approval of the competent authority, without placing before tender committee.
- iii. The detailed arrangement for proper checking of the tenders and preparation of comparative statements are left to the tender inviting office but any such arrangement must provide that the Finance Dept. makes satisfactory and efficient arrangement for checking the computed tenders.
- iv. Whenever the tenderers stipulate any unacceptable conditions outside the stipulations in the NIT e.g. shorter validity period, withdrawal/modification of the offer within the stipulated validity period etc. the tender inviting officer concerned shall immediately write to the tenderer asking him to comply with the conditions of the NIT and incorporate a suitable note in the comparative statement regarding the outcome of such exercise.
- v. Before acceptance of the tender all the conditions, modifications etc. submitted by the tenderers shall be finally settled. The acceptance letter for the tender shall be issued only after full and complete settlement of all conditions, modifications etc.
- vi. Earnest Money:

The Bid shall be accompanied by the Bid Security or documentary evidence for exemption of Bid Security. The tender without Bid Security or documentary evidence for

exemption shall be treated invalid. The primary purpose of Earnest Money is to ensure that the Contractor starts the work when his tender has been accepted. In case of his failure to do so, his Earnest Money is forfeited. In certain cases large private firms of repute may not be willing to deposit Earnest Money, particularly those supplying specialized materials and/or execute works requiring specialized skills. If at all such situation arises, such firms may be allowed exemption of Earnest Money with prior approval of the administration. The benefit of Exemption of EMD to all Micro and small enterprises (MSE) will allowed. Shall upload with their offer, the proof of their being MSE registered with district industries center (DIC) or Khadhi and village industries commission or Khadhi and Industries board (KVIV) or Coir board or National Small Industries Corporation (NSIC) or Directorate of handicrafts and handlooms or Udyog Aadhar Memorandum or Udyam Registration Certificate or any other body specified by Ministry of MSME will be considered. In the event of Bidder withdrawing his Bid before the expiry of tender validity period of 90 days from the last date for online bid submission, the tender shall be cancelled and the bidder shall be disqualified from bidding for any contract with New Mangalore Port Authority for a period of 2 (two) years starting from the date of notification from the Employer.

- a. The Earnest Money Deposit of unsuccessful bidder, if deposited in cash, shall be returned without interest by RTGS/NEFT on conclusion of contract. The Earnest Money Deposit of the successful bidder shall be refunded (without interest) after he has signed the agreement and furnished required performance security.
- b. The Bid Security of a successful bidder will be forfeited, if deposited in cash or if the bidder is submitted bid security declaration, the bidder shall be disqualified from bidding for any contract with New Mangalore Port Authority for a period of 2 (two) years starting from the date of notification from the Employer in the following cases:
  - i. If the bidder withdraws his Tender during the period of bid validity.
  - ii. In case of a successful tenderer fails
    1. To commence the work, apart forfeiture of other claims
    2. Within the specified time limit to sign the Agreement or furnish the required Performance Security. In the event of forfeiting the EMD / SD / LD and while imposing penalty GST as applicable will be collected.
- c. While forwarding the tenders, to the higher authority for sanction through the Finance Dept. the following details shall be prominently indicated to ensure that there is no

delay in processing of the balance work pertaining to processing of the tender and decisions are conveyed to the tender inviting officer well in time:-

- i. Validity period of the tender.
- ii. Time already taken in scrutiny.
- iii. Balance period available for completion of the evaluation and placement of order.
- iv. Period required after receipt of decision to convey acceptance to the tenderer.
- v. In case of Tenders where the validity period has expired decision to accept the same shall be taken only after getting the validity period suitably extended and obtaining confirmation from the tenderer in writing to that effect. In case of any bidders not accepting to extend the bid validity period, such bids shall be considered as Non-Responsive.

In the proposal recommending acceptance of a tender the following shall be certified:

- a) Rates recommended are fair and reasonable and recommended for acceptance.
- b) Scope of the work as approved by the competent authority has remained unchanged.

### 3.12 Evaluation of Bids

The evaluation of Bids 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 or not stated in the contract, with the exception of provisions of laws in force. No hearsay information or hitherto undeclared condition should be brought in while evaluating the tenders. Similarly, no tender enquiry condition (especially the significant/ essential ones) should be overlooked/ relaxed while evaluating the tenders. The aim should be to ensure that no tenderer gets undue advantage at the cost of other tenderers and/ or at the cost of Procuring Entity. Information relating to evaluation of tenders and the Tender Committee's (TC's) deliberations should be confidential and not be shared with persons not officially connected with the process. The process of tender evaluation proceeds is described in the subsequent paras.

### 3.13 Preparation of Comparative Statement and Briefing Note

Except in cases of LTE, the Procuring Entity should prepare a comparative statement 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, 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 associated / integrated Finance or the agency appointed by the port for the said purpose for veracity of information. The briefing note shall be prepared and approved by the convener of the TC for guidance of other TC members, before first TC meeting is held. TC cannot have tender accepting authority as a TC member.

### 3.14 Preliminary Examination

#### 3.14.1 Confidentiality of Process

- i. Information relating to the examination, clarification, evaluation and comparison of bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other person not officially concerned with such a process until the award to the successful bidder has been announced.
- ii. From the time of bid opening to the time of contract award, no bidder shall contact the Procuring Entity on any matter related to the bid, except on request and prior written permission.
- iii. Any effort by the bidder to influence the Procuring Entity in bid evaluation, bid comparison or contract award decisions will vitiate the process and will result in the rejection of the bidder's bid. Such conditions, incurring in (i) & (ii) above shall be embedded in the Instructions to Bidders (ITB).

#### 3.14.2 Unresponsive Tenders

Tenders that do not meet the basic requirements specified in the bid documents are to be treated as unresponsive (both during Techno-commercial evaluation and Financial Evaluation in case of Two Envelope bidding) 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. Unresponsive offers may not subsequently be made responsive by

correction or withdrawal of the non- conforming stipulation. 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 an enlisted contractor but the tenderer is not an enlisted contractor);
- iv. 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
- v. 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 Procuring Entity's operators for operating the equipment. The tenderer has, however, quoted only for supply of the equipment).

#### 3.14.3 Discrepancies between Original and Additional/ Scanned Copies of a Tender

Discrepancies can be observed in responsive tenders between the original copy and other copies of the same tender set. In such a case, the text, and so on, of the original copy will prevail. Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected. In e-Procurement there could be discrepancies between the uploaded scanned copies and the Originals submitted by the bidder. However normally no submission of original documents in physical format (other than Cost of Bid Documents, Bid Security and statutory certificates, legal documents if any) should be asked for in e-Procurement

#### 3.14.4 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. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 3.15.1 (iv) below) 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 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 Procuring Entity'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.

#### 3.14.5 Clarification of Bids/ Shortfall Documents

During evaluation and comparison of bids, the Procuring Entity may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/ speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid including specifications, shall be sought, offered or permitted. No post-bid clarification at the initiative of the bidder shall be entertained. The shortfall information/ documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, GSTN number has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a contract without its completion/ performance certificate, the certificate can be asked for and considered. However, no new contract should be asked for so as to qualify the bidder.

#### 3.15 Evaluation of Responsive Bids

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 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 (the lowest evaluated, substantially responsive, technically-suitable bid from eligible and qualified bidder) among these. 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 multiple envelopes from the shortlisted qualified bidders. Evaluation of techno- commercial and financial aspects are, however, discussed separately below.

### 3.15.1 Evaluation of Techno-commercial Bid

In evaluation of the techno-commercial bid, conformity of the eligibility/ qualification, technical and commercial conditions 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. It is of utmost importance that the authenticity, integrity and sanctity of unopened Financial Bids must be ensured, before their opening. All the financial bids may preferably be put in a large envelope, which may be dated, sealed and signed (including by some of the bidders present), to show that none of the bids were accessed during the custody.

i. Evaluation of eligibility/ qualification Criteria:

Procuring Entity will determine, to its satisfaction, whether the tenderers are eligible, qualified and capable in all respects to perform the contract satisfactorily. Tenders that do not meet the required eligibility/ qualification criteria prescribed will be treated as unresponsive and not considered further. This determination will, inter-alia, take into account the tenderer's financial, technical and production capabilities for satisfying all of Procuring Entity's requirements as incorporated in the tender document. Such determination will be based upon scrutiny and examination of all relevant data and details submitted by the tenderer in its/ his tender as well as such other allied information as deemed appropriate by Procuring Entity.

ii. Evaluation of Technical Suitability:

The description, specifications, drawings and other technical terms and conditions are examined by TC in general and technical member(s) of the TC in particular. Nobody outside the TC should be allowed to determine this evaluation. Even if an external expert's advice and report is obtained, it is still the responsibility of the technical member(s) in particular and the TC in general to accept/ reject or modify the evaluation contained in such a report/ evaluation. The tender document should clearly state whether alternative offers/ makes/ models would be considered or not and, in the absence of an express statement to the effect, these should not be allowed. An important document is the exceptions/ deviation form submitted by the tenderer. It is important to judge whether an exception/ deviation is minor or major. Minor exceptions/ deviations may be waived provided they do not constitute any material deviation and do not have significant financial impact and, also, would not prejudice or affect the ranking order of the price bid. Exceptions / deviations should not grant the tenderer any undue advantage vis-à-vis other tenders and Procuring Entity.

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 Procuring Entity.

iv. Considering Minor Deviations:

Bids which are not materially deviated, may be considered substantially responsive. 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, the procuring entity'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.
- v. Declaration of Technically Compliant Bidders:

If it is a multiple 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-publicised 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.

### 3.15.2 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 date and time of opening of price bid shall be fixed such that the time gap between uploading technical evaluation report in portal and date and time of price bid opening shall not be less than 48 hours. 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 3.18.5 below.

### 3.15.3 Evaluation of Financial Bids and Ranking of Tenders

i. Unresponsive Tenders:

Unresponsive tenders may again be identified after Financial Bid opening, as in case of Technical Bid opening. 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. 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 by defining the treatment of bids in the tender documents in the manner indicated below:

- a) If, in the price structure quoted for the requirements, there is discrepancy between the unit price and total price (which is obtained by multiplying the unit price by the quantity, or the total price is not worked out by bidder), the unit price shall prevail and the total price corrected accordingly;
- b) 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
- c) If there is a discrepancy between words and figures, the amount in words shall prevail.

Such a discrepancy in an offer should be conveyed to the tenderer asking him to respond by a target date and if the tenderer does not agree to Procuring Entity's observation, the tender is liable to be rejected.

iii. Correction of Bids:

Tender document should indicate that the evaluated bid prices will be adjusted after taking into account: (a) correction for errors; (b) adjustments for any acceptable variations, deviations; and (c) adjustments to reflect any discounts or other modifications offered. 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. Variations, deviations, or alternative offers and other factors which are in excess of the bidding documents or otherwise result in unsolicited benefits for the contractor should not be taken into account in bid evaluation. All duties, taxes and other levies payable by the bidder under the contract or for any other cause shall be included in the rates, prices and total bid prices, and considered in evaluation of bids. Bids should be checked for any arithmetical errors. These corrections shall be done in accordance with the provisions of the bidding document. In cases other than e- Procurement, the quoted rates in the bids shall be protected with lamination by the committee, if

not done by the bidders. In accordance with the corrections as approved by the TC, the amount stated in the bid will be adjusted with the concurrence of the bidder, and shall be binding on him. If the bidder does not accept the corrected amount, the bid will be rejected and the bid security forfeited. The arithmetical corrections will be done by the representatives of the Finance Division and the concerned (technical) division in the committee.

iv. Financial Evaluation:

All responsive bids are evaluated by the TC with a view to select the lowest (L1) bidder - the lowest evaluated, substantially responsive, bid which meets the eligibility/ qualification criteria and techno-commercial aspects.

3.15.4 Responsibility Matrix for tendering process

Sl. No	Activity	Responsibility
1	Preparation of Draft Tender document in line with approved estimate and forwarding for approval.	Assistant Engineer / Assistant Executive Engineer
2	Publication of Tender in E-tender Portal	Executive Engineer
3	Opening of Tender	Executive Engineer
4	Preliminary Evaluation and preparation detailed bid comparative statement forwarding for approval.	Assistant Engineer / Assistant Executive Engineer
5	Communication of Evaluation statement with scrutiny note to tender committee	Executive Engineer
6	Verification and confirmation of Genuineness of work completion certificate submitted by the bidders.	Executive Engineer
7	Preparation of Tender Committee Proceedings and get it signed by all the members	Convener / Chairman of the Tender Committee
8	Forwarding tender committee recommendation to approval of the Competent authority.	Assistant Engineer / Assistant Executive Engineer
9	Preparation of draft work order and forwarding for approval	Assistant Engineer / Assistant Executive Engineer
10	Issue of work order	As per monetary limit mentioned in clause No. 2.5.4 of the manual

3.16 Deliberations by the Tender Committee

3.16.1 Timely Processing of Tenders

Delays in finalising procurement deprive the public of the intended benefits and results in lost revenues and cost over-run. The contracts generally awarding in 90

days from the date of tender opening. In order to further shorten the period for award of contract, Every efforts shall be made by all concerned officers to shorten the procurement decision period to 60 days from the date of opening of the tenders in most of the cases. Only in exceptional cases, like two packet / two stage bidding the period may be extended. However, in no case this time period should exceed 75 days

### 3.16.2 Recommended Time-frame for Processing of Tender:

Top priority shall be given to decide the award of the work after receiving the tenders. In order to minimize chances of delay the following time-frame shall be observed by all concerned for processing of tenders as far as practicable:

- a) For quotations invited from Divisional offices for works estimated to cost less than Rs.2.00 lakhs.

Sl. No	Activity	Time duration (Maximum)
i	Preparation of comparative statement after overall scrutiny of tenders and forwarding the tender-papers to the Finance Dept. for Audit observations	10 days.
ii	Scrutiny by Finance Department and return to Division with Audit Observations	03 days.
iii	Reply to Audit Queries/Observations	02 days.
iv	Concurrence by the Finance Dept. and forwarding to Tender accepting authority	03 days
v	Approval by Competent Authority	02 days
vi	Placement of Order by the Division	03 days
vii	Other delay in dispatch of files	05 days
	Total	28 days

- b) For limited tenders for works estimated to cost more than Rs.2.00 lakhs and up to Rs. 5.00 Lakhs invited in single cover system and requiring Tender Committee recommendations:

Sl. No	Activity	Time duration (Maximum)
i	Opening of bids, preparation of comparative statement forwarding the tender papers to Finance Department for approval	07 days
vi	Scrutiny by Finance Department and return for T.C Meeting	07 days
vii	Seeking justification from the L1 bidder, verification of genuineness work completion certificates, Convene of T.C.	10 days

	meeting and Finalization of price bid tender.	
viii	Approval by Competent Authority	04 days
viii	Placement of work order	02 days
	Total	30 days

- c) For open tenders for works estimated to cost more than Rs. 5.00 Lakhs invited in two cover system and requiring Tender Committee recommendations:

Sl. No	Activity	Time duration (Maximum)
i	Preparation of technical bid comparative statement after overall scrutiny of tenders, including obtaining clarification from the bidder and forwarding the tender papers Finance Department for approval	15 days.
ii	Scrutiny by Finance department and return for T.C meeting	07 days.
iii	T.C. meeting and Finalization of technical bid tender	07 days.
iv	Approval of the TC recommendation by Competent Authority	07 days
v	Opening of price bids, preparation of price comparative statement forwarding the tender papers to Finance Department for approval	02 days
vi	Scrutiny by Finance department and return for T.C meeting	05 days
vii	Seeking justification from the L1 bidder, verification of genuineness work completion certificates, Convene of T.C. meeting and Finalization of price bid tender.	07 days
viii	Approval by Competent Authority	07 days
viii	Placement of order by CE/ Divisional Officers	03 days
	Total	60 days

- d) For major projects / projects of national importance and monitored by the Ministry, the following time lines shall be followed.

Sl. No	Activity	Time duration (Maximum)
1	Project bidding	2 Months (Call for open tender and submission of bids)
2	Evaluation of Bids	1 Month
3	Award of works	½ Months
	Total	3½ Months

Every efforts shall be made by all concerned officers to maintain the above time frame. If any officer is unable to follow the above time frame he shall invariably give reasons for any delay. Depending on urgency of the work maximum time-limit indicated above shall be shortened to the desired time-limit.



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.

It has been also noted that delay in decision making after opening of certain tenders is taking place because the Tender Committee (TC), wherever in place, are not meeting frequently. In order to ensure that most of the tenders are decided as per the new timelines as indicated above.

After the decision has been taken by the competent authority (TC or individual procuring officer) on the tender, such decision and the minutes of the TC (wherever applicable), except the portion that may divulge third party technical/ commercial confidential information, should be uploaded on the Central Public Procurement portal (CPPP) within three working days for greater transparency.

### 3.16.3 Extension of Tender Validity Period

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 period. The validity period should not be unreasonably long as keeping the tender unconditionally valid for acceptance for a longer period entails the risk of getting higher prices from the tenderers.

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 lead 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.

Reasons for seeking extension of bid validity should be recorded by the procuring officers.

#### 3.16.4 Reasonableness of Prices

In every recommendation of the TC for award of contract, it must be declared that the rates recommended are reasonable. The comparison maybe made with the similar contracts awarded elsewhere. The Last Purchase Price (LPP) maybe updated taking into consideration inflation during the interim period and geographical conditions etc.

#### 3.16.5 Consideration of Abnormally Low Bids

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

As a safeguard, it should be closely monitored that final payments in such cases do not abnormally increases due to extra items. Further, there is no abnormal increase in quantities of the item for which contractors have initially quoted very high rates.

#### 3.16.6 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" 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 etc., and requesting them, inter-alia, to take suitable strong actions against such firms. New firms may also be encouraged to get themselves enlisted for the subject goods to break the monopolistic attitude of the firms forming a cartel. Changes in the mode of procurement (post qualification instead of pre-qualification) and packaging/ slicing of the work may also be tried. A warning clause may also be included in the bid documents to discourage the bidders from indulging in such practices.

### 3.16.7 Unbalanced Bids:

If the tenderer quotes abnormally high rate in respect of one or more items and/or quotes abnormally low rates in respect of one or more items, the tenderer is said to have taken resort to "Unbalanced Bid". Unbalanced bids are to be analysed properly during evaluation of tenders since exceeding the items quantitatively against which abnormally high rates have been quoted is to be avoided during execution as far as possible.

The accepting authority, while accepting tenders, should impose a restriction that quantities of items in item rate tenders for which the contractor has quoted high or low rates (i.e where the variation between the tendered rates and estimated rates are more than 25%) are not allowed to be varied by more than 5%. All the Divisional Officers are required to ensure that wherever a work is accepted imposing this restriction, the quantities of items carrying high or low rates, they should invariably bring to the notice of the higher officers concerned for specific approval of any such variations beyond 5%.

### 3.16.8 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;
  - 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 jeopardise essential operations, maintenance and safety, negotiations with L1 bidder(s) may be done for bare minimum quantum of requirements. The balance bulk requirement should, however, be procured through a re-tender, following the normal tendering process.
- 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. The following procedure should be adopted after approval of the CA:
- a. Negotiations must be carried out by the CA or TC only;
  - b. 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;

- c. The tenderer to be called in for negotiations should be addressed as per prescribed format of letter, so that the rates originally quoted by him shall remain open for acceptance in the event of failure of the contemplated negotiation; A negotiations meeting should be started only after obtaining a signed declaration from the negotiating contractor in the prescribed form
- d. Revised bids should be obtained in writing from the selected tenderers at the end of the negotiations in the prescribed format of letter. 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.

#### 3.16.9 Consideration of Lack of Competition

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. The contract may be placed on the ‘Single Offer’ bidder provided the quoted price is reasonable. However restricted powers of Single tender mode of procurement would apply. Before retendering, the procuring entity is first to check whether, while floating/ issuing the enquiry, all necessary requirements and formalities such as standard conditions, industry friendly specification, wide publicity, sufficient time for bidding, and so on, were fulfilled. If not, a fresh enquiry is to be issued after rectifying the deficiencies. It has become a practice among some procuring entities to routinely assume that open tenders which result in single bids are not acceptable and to go for retender 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 bid. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the process 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

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. Unsolicited offers against LTEs should be ignored, however Ministries/ Departments should evolve a system by which interested firms can enlist and bid in next round of tendering.

#### 3.16.10 Rejection of All Bids/ Re-tender

- i. The Procuring Entity may cancel the process of procurement or rejecting all bids at any time before intimating acceptance of successful bid under circumstances mentioned below. In case where responsive bids are available, the aim should be to finalise the tender by taking mitigating measures even in the conditions described below. If it is decided to rebid the tender, the justification should balance the perceived risks in finalisation of tender (marginally higher rates) against the certainty of resultant delays, cost escalations, loss of transparency in re-invited tender. After such decision, all participating bidders would be informed and bids if not opened would not be opened and in case of manual tenders be returned unopened:
  - 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. In case, the bidder, whose bid has been found to be the lowest evaluated bid withdraws or whose bid has been accepted, fails to sign the procurement contract as may be required or fails to provide the security as may be required for the performance of the contract or otherwise withdraws from the procurement process, the Procuring Entity shall re-tender the case.
- ii. Approval for re-tendering should be accorded by the CA after recording the reasons/ proper justification in writing. The Procuring Entity should review the qualification criteria, and technical and commercial terms of the tender before re-tendering and also consider wider publicity to attract an adequate number of responses. The decision of the procuring entity to cancel the procurement and reasons for such a decision shall be immediately communicated to all bidders that participated in the procurement process. Before retendering, the procuring entity is first to analyse the reasons leading to retender and 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.

#### 3.16.11 Handling Dissent among Tender Committee

Tender Committee duties are to be discharged personally by the nominated officers. They may take help of their subordinate officers by way of reports/ evaluations, 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.

All members of the TC should resolve their differences through personal discussions instead of making to and fro references in writing. In cases 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. CA can overrule such dissent notes after recording reasons for doing so clearly. His decision would be final.

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 tender accepting authority can finally decide as deemed fit, duly recording detailed reasons. He will be responsible for such decisions. However, such situations should be rare.

#### 3.16.12 Independence, Impartiality, Confidentiality 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 in the form of any liaison or relationship 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. All TC members 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 reports. GFR 2017 [Rule 173 (xxii)] mandates that In case a Tender Committee is constituted to purchase or recommend the procurement, no member of the purchase Committee should be reporting directly to any other member of such Committee, to ensure independent expression of views.

#### 3.16.13 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 contractor in his bid are not left un-deliberated and ruled upon in the TC; otherwise there may be delay in acceptance of the contract by the contractor. These recommendations are submitted for approval to the tender accepting authority. Since a nominee of Financial Adviser of the Department is usually a member of the Tender Committee, there is no need for the



CA to consult the FA of the Department 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:

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

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

### **3.17 Acceptance of Tender other than the lowest:**

In case higher offer is accepted in consideration of earlier completion period, time must be the essence of the contract. That the higher offer has been accepted in consideration of the earlier completion period, should be made known to the successful tenderer before awarding the contract, and a suitable note must also be incorporated in the work order and the Agreement.

In case of extension of time in such cases, loss to NMPA may not be covered by the L.D. Clause. The total loss to NMPA in such cases should be kept in view before allowing extension of time in such cases.

Note: This will, however, not be applicable where the higher offer is accepted for other reasons viz. capacity etc.

### **3.18 Award of Work**

#### **3.18.1 Acceptance of Tender**

The tender shall be accepted by the competent authority delegated with powers under relevant sanction of The Major Port Authority Act, 2021. The tender dealing officer while forwarding the tender proposal should give clear undertaking that, all statutory compliances including CVC guidelines are followed in the tendering process right from preparation of

tender document till issue of work order and no negotiation has been conducted. Once a tender is accepted the acceptance letter shall be sent to the successful tenderer immediately by the Tender Inviting Authority (TIA). While communicating the acceptance, the letters and correspondence which would form part of the contract/agreement shall be clearly stated.

Acceptance of any tender constitutes a binding contract until a formal agreement is executed and as such the acceptance letter should be worded suitably. A typical form of work order is appended at Annexure

### 3.18.2 Letter of Intent (LOI):

Under circumstances beyond control it may become necessary to convey the acceptance of the offer by a "Letter of Intent" (LOI) within the validity period of the offer.

The LOI shall contain the followings:

- a) that the contractors offer (i.e. the tender submitted by him) has been accepted in principle.
- b) that the contract period shall commence from the date of receipt of the LOI.
- c) that a formal Work Order (WO) will follow and
- d) that the LOI will form a part of the Contract Agreement. The LOI shall also clearly indicate any special terms and conditions that has been mutually agreed between the Engineer and the Contractor at the time of negotiations.

The LOI, when issued, shall be followed by the formal Work Order as soon as the tender is sanctioned. The Work Order shall make clear reference to the relevant LOI issued to the Contractor earlier.

### 3.18.3 LOA to Successful Bidder

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 foolproof method that his bid has been accepted. Legally communication of acceptance of offer is considered complete as soon as it is submitted to Postal authorities. A template for the Letter of Acceptance (or Notice of Award, or Acceptance of Tender) is given in Annexure. In the same communication, the successful tenderer is to be instructed to furnish the required performance security within a specified period.

In respect of contracts upto Rupees five lakh, where tender documents include the General Conditions of Contract (GCC), Special Conditions of Contract (SCC) and scope of work, the letter of acceptance will result in a binding contract.

In respect of contracts with estimated value more than Rupees five lakh, a contract document should be executed, with all necessary clauses to make it a self contained contract. If, however, these are preceded by Invitation to Tender, accompanied by GCC and SCC, with full details of scope and specifications a simple one page contract can be entered into by attaching copies of the GCC and SCC, and details of scope and specifications, offer of the tenderer and letter of acceptance.

Contract document should be invariably executed in cases of turnkey works or agreements for maintenance of equipment, provision of services etc.

#### 3.18.4 Publication of Tender Results

GFR 2017 (Rule 159) makes it mandatory to publish details of Bid award on the CPPP and also in the notice board/ bulletin/ website of the concerned ministry or department/ e- Procurement Portal. In case publication of such information is sensitive from commercial or security aspects, dispensation may be sought from publishing of such results by obtaining sanction from the Chairman with finance concurrence. Statistical information on the number of cases in which exemption was granted and the value of the concerned contract should be intimated on a quarterly basis to the Ministry of Finance, Department of Expenditure.

#### 3.18.5 Bidder's right to question rejection

The date and time of opening of price bid shall be fixed such that the time gap between uploading technical evaluation report in portal and date and time of price bid opening shall not be less than 48 hours. 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. The procuring entity 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 enlistment 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

Following decisions of the procuring entity 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;
- g) Issues related to ambiguity in contract terms may not be taken up after a contract has been signed, all such issues should be highlighted before consummation of the contract by the vendor/ contractor; and
- h) Complaints against specifications except under the premise that they are either vague or too specific so as to limit competition may be permissible.

#### 3.18.6 Performance Security

Within 21 days of receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the form in the form of Insurance Surety Bonds, Account Payee Demand draft, Fixed Deposit Receipt from a commercial bank, remittance by RTGS or in the form of Bank Guarantee for an amount equivalent to 5% of the Contract price including GST, as applicable rounded off to the nearest 1000.

If the performance security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued by a Nationalized /Scheduled Indian bank having its branch at Mangalore acceptable by NMPA. The BG shall be issued in favor of New Mangalore Port Authority in the prescribed Format enclosed in enclosed in tender document. Submission of Performance Security is not necessary for a contract value upto Rs. one lakh

#### 3.18.7 Retention Money

The Employer shall retain from each payment due to the Contractor the proportion stated in the tender document until Completion of the whole of the Works.

Retention Money shall be deducted at the rate of 10% from first Running Bill onwards subject to a maximum of 5% of the contract price (Contract price including GST).

Retention money shall be refunded after completion of defect liability period along with performance security.

#### 3.19 Responsibility of the Finance Department / Auditors posted by Finance Department.

It is decided by the Port Authority Board that an auditing agency shall be engaged and auditors shall be posted to deferent departments, vide Agenda Item No. 34 of the meeting held on 09-02-2024, Res No.223/2023-24.

- i. On receipt of the bids and the accompanying comparative statement Finance Dept. / Auditors posted by Finance Department shall conduct scrutiny of the bids to satisfy themselves that the checking has been properly done. They shall also scrutinise and check the Comparative Statements including the tendered value of each individual tenders.
- ii. On completion of scrutiny and checking the bid documents shall be returned to the tender inviting authority (TIA) with audit queries/observations.
- iii. On receiving back the bid documents form the TIA with replies to the audit-queries the Finance Dept. / Auditors posted by Finance Department shall give their concurrence to place before tender committee or forward the proposal with all connected papers to the competent authority.
- iv. The Finance Dept. Auditors posted by Finance Department shall be responsible for safe custody of the tender documents with all connected papers during the period they remain in the Finance Dept. / Auditors posted by Finance Department.

#### 3.20 Emergency Works:

Under emergency situations normally arising out of natural calamities e.g. flood, cyclone etc. and /or accidents etc. when human life is endangered/normal operation of the port works

are disrupted and further loss of property is apprehended and repair works are to be taken up without any loss of time, execution of works may be taken up by issuing orders to shortlisted contractors.

However, in all such cases the concerned Divisional Officer shall at once bring the details of such damages/losses to the notice of his higher authorities including CE/ Dy.CH/CH as situations may demand and may proceed with the works. Attempts shall be made by the Divisional Officer for obtaining competitive rates, as far as practicable, from the contractors available through inviting "spot bids" and the order to commence the work shall be issued by an authority not less than him.

An "Emergency Certificate" containing the following informations shall be submitted by the Divisional Officer to his higher authority at the earliest available opportunity for information and communicating post-facto sanctions of the Competent Authority in due course.

1. Description of work.
2. Circumstances which warrant the Emergency.
3. Maximum probable cost likely to be involved.
4. Date and time of commencement of work.
5. Probable date of submission of detailed estimate.
6. Provision of funds, if any, made at the Divisional level.

The basis of assessment of maximum probable cost shall be the KPWD SR /LMR as far as practicable. However, the contractors engaged for emergency works are expected to mobilise their resources including men, materials, equipment etc. at very short notices and may have to work under difficult conditions beyond normal duty hours or even round the clock. Due consideration in the form of additional surcharge shall be made while assessing the probable cost for which the Heads of Divisions are authorised to take prompt decision on the spot, to be subsequently communicated to the CE/Dy.CH/CH at the earliest available opportunity.

### 3.21 Deviations from Terms and Conditions of the Contract:

The terms and conditions of a contract should not be varied without approval of the competent authority. Also no, payment to the contractors by way of compensation or otherwise outside the strict terms and conditions of the contract, or in excess of the contract rates may be authorised without prior approval of the Competent Authority. Some of the

areas where the contractual terms and conditions are likely to be amended leading to undue advantage to the contractors are as below:

Granting interest-free advances e.g. Mobilisation Advances, Secured Advances, Ad-hoc Advances, Advances for purchase of materials etc. when such advances are not permissible under the contract.

Payment of bonus to Architects and/or Contractors, when such payments are not admissible under the terms of the contract.

Changing specifications and/or nature of the work to be done without making corresponding financial adjustments.

Issue of materials and/or plant and equipment to the contractor when these are not stipulated for issue, and at rates much lower than the prevalent market rates or the cost element of the input in the rate quoted by the contractor.

Enhancing the contract rates for some items of the work or suppliers when the contract does not provide for such enhancement.

### 3.22 Payment Procedure:

#### 3.22.1 Standard operating procedure for contractor's bill payment

Running Account Bill for conservancy, horticulture, railway track maintenance, pump operation upkeepment of toilet blocks and running account bills of other works viz., construction, renovation, miscellaneous works etc., including final bill

- a) Contractor has to submit the bill on monthly basis on or before 15th of every month for the work carried out for the previous month.
- b) The bill shall be enclosed with tax invoice, pay slip, Attendance Register signed by the supervising officer, Bank payment details etc., of the work for which bill is claimed and ESI/EPF payment challans with Annexure of payment employee wise of the preceding month along with necessary approvals. In case of deficiency in documents the bills shall be returned to the contractor within 3 days recording reasons for rejection. Recovery of LD, Penalty etc., shall be made for non-compliance of contract conditions.
- c) Joint measurement should be taken promptly for all works by the concerned Assistant Engineer or Assistant Executive Engineer along with contractor and make the entries into the MB book within first week of next month. The AE/AEE

would check the measurements and preparation of abstract and certify within 5 working days of the joint measurement and submit to the AEE/Executive Engineer.

- d) The work shall be certified by the concerned user department. The concerned engineer shall ensure all terms and conditions of the tender/agreement/contract are followed. Port internal auditors to check the contract bills as per the scope or internal audit.
- e) The Executive Engineer/superintending Engineer (Civil) shall countersign the measurements and forward the bills with MB books within 4 working days to the Finance Department. In total within 9 working days from the date of submission of the bill or invoice of the contractor in complete shape shall be submitted to Finance Department by Executive Engineer office.
- f) The concerned Engineers may ensure that contractor has to make payment to all workers as per minimum wages act on or before 7th day of each month through electronic mode to the bank accounts of workers.
- g) Finance Department shall process the bill and pay within 5 working days from the date of receipt of the bill complete in all respect. In case any deficiency the bill shall be returned to the concerned engineer immediately.

### 3.22.2 For running accounts bills of other work (Civil Works) as detailed below.

- a) The bills for other Construction/Renovation/Miscellaneous works which are not paid on monthly basis the Contractor has to submit the bill within 7 days of joint measurement taken along with the concerned Engineer. The Engineer has to ensure that joint measurement to be completed within 7 days of completing of part work / running work. The concerned Engineer i/c shall check and make entries into bill/M.B within 10 days of submission of the interim bill and submit to Executive Engineer/ Superintending Engineer (Civil). The Executive Engineer/ Superintending Engineer (Civil) shall check the bills and after certification of the quantities as per manual shall forward to the Finance Department within 3 working days. The Contractor and Assistant Engineer both jointly complete the measurements, if Contractor due to any reason does not attend/avoid joint survey/measurements the Executive Engineer shall give notice to the contractor to be present at the site for joint measurement within 7 days' notice. If the



contractor fails to attend the joint measurement second notice shall be issued to the contractor to attend the joint measurement within 3 days failure to attend the site for joint measurement the Assistant Engineer and AEE or EE would record the reason and complete the measurements in a transparent manner departmentally and submit the bill.

- b) Entries shall be made into the Bill Register maintained at the office of the Executive Engineer and would contain details viz., bill/invoice number, date of submission of the invoice, name of the Contractor, name of the work, date of the bill forwarded to Finance Dept., If bill is in order the concerned Executive Engineer will forward the bill to the Finance Dept., with a concurrence of Superintending Engineer (Civil) within 9 working days from the date of receipt of the bill (both hard copy and through ERP). In case the bill received in Executive Engineer's office is not in full shape the same has to be returned to the contractor within 3 days by recording the reasons for rejection. If the error in the bill is of minor correction, instead of delaying the payment, the contractor can be allowed to correct the bill on the spot with recorded reasons.

### 3.22.3 Final Bill payment

The contract shall submit the final bill/invoice within 60 days from the date of completion of the work with all the enclosures viz., PF/ESI contribution, and detail measurements with any recoveries. The Contractor and Assistant Engineer both jointly complete the measurements: if Contractor due to any reason does not attend/avoid joint survey/measurements the Executive Engineer shall give notice to the contractor to be present at the site for joint measurement within 7 days. If the Contractor fails to attend the joint measurement second notice shall be issued to the contractor to attend the joint measurement within 3 days. Failure to attend the joint measurement the Assistant Engineer/Assistant Executive Engineer (Civil)/EE(C) would record the reason and complete the measurement in a transparent manner departmentally and submit the bill within 60 days.

Finance Department shall process the bill and pay within 5 working days from the date of receipt of the bill complete in all respect. In case any deficiency the bill shall be returned to the concerned engineer immediately.

### 3.23 Guidelines for Recording measurements in M.B.:

The following guidelines should be followed:

1. The M.B. shall be treated as the basis of all accounts of quantities of work done/materials supplied.
2. There shall be no unnecessary delay in recording measurements after the work is executed/materials supplied. All measurements shall be neatly entered in the M.B. The description of the location of the work shall be lucid so as to facilitate easy identification and cross-checking. As far as practicable the measurements shall be recorded in the same order of the item nos. as in the work order/BOQ. for facility of preparation of the bill. Authentication of all correction/deletion in the M.B. should also be recorded with initials of the contractor or his authorised representative.
3. Entries shall be recorded continuously in the M.B. No. blank pages shall be left out, nor any page be torn. All cancellations should be attested. Each M.B. shall be provided with an index which shall be kept up-to-date. The pages of the M.B. shall be machine numbered serially so that if any page is torn or found missing it can be readily identified.
4. The entries in the M.B. shall be made in ink or ball point pen. No entry in the M.B. shall be erased or rendered illegible. If mistake is made at the time of entry or detected at the time of checking, it shall be corrected by penning through the incorrect entry and entering the correct entry between the line. Each such correction shall be initialled by the Officer correcting it and by his higher officer, check measuring or countersigning the measurements. The contractor's authentication on all such corrections should also be taken after correction. The objective shall be to make a legible record of the work done as it may have to be produced as evidence in the Court of Law at any subsequent period of time.
5. Single digit entries in the "No." Column of M.B. shall be preceded by "0" i.e. "1" shall be written "01". Mathematical signs shall be inserted between No. length, breadth and width column, wherever applicable, to eliminate chances of error while entering/computing the measurements.
6. In cases of on-account measurements (second and subsequent) if the works done since the last certificate could be measured accurately then before commencing to record the measurement of the subsequent work, the quantity and amount paid as per the last certificate shall be copied under the respective item nos. by referring to the last on-

account certificate/Bill. In cases where the work shall have to be measured in full due to technical reasons or otherwise, such entries shall be made under the caption "Re-measured" prominently underlined. The payable amount shall be arrived at by multiplying the full quantity with the sanctioned rate and the amount paid previously (and not the quantity or part rate if allowed) shall then be deducted from the final amount to arrive at the figure of the balance payable amount.

7. The M.B. shall be looked upon as very important document. All M.B. shall be carefully checked by the AE/AEE/EE to ensure that they are properly kept and the measurements have been correctly recorded and that they are complete records of each account of work done/materials supplied for which certificates are granted.
8. A register of M.B. shall be maintained in each Divisional Office showing their receipts and disposals.
9. A register for movement of M.Bs shall also be maintained at the office of the concerned. The eventual return of all M.Bs to the office of concerned Divisional Head for record shall be insisted upon. This shall be checked at least once in every year normally in the month of September by the EE and as a token of his scrutiny he shall sign the register.
10. All M.Bs for capital works shall be preserved for 10 years and for maintenance work for 5 years from the date of completion of the work.
11. Provision is made in the ERP for E-MB. The Department should enter the measurement and generate the receipts.

### 3.24 Passing of Bills:

The measurement recorded in the M.B. shall not be passed for payment without the signature of the following officers:

#### 3.24.1 Measuring Officer:

Measuring Officer shall be responsible for recording the measurement personally and for correctness (within the approved tolerances) of the entries made by him. He shall record in the M.B. the details of supply of materials from Board of Members Stores. The material reconciliation statement showing the issue of consumption of materials shall be prepared by him at the time of drawing the final bill on the basis of consumption rates stipulated in the contract or as per approval of the CE as the case may be. He shall also make computation of the measurements recorded by him in the MB. The Measuring Officer shall put his signature below the entries made in the

MB with the declaration "measured by me". The Measuring Officer shall be an Officer not below the rank of Junior Engineer.

#### 3.24.2 Check Measuring Officer:

Check Measuring Officer shall check at least 100% of the entries as well as value of each bill signed by him. He shall check the measurement of reinforcements for RCC works before concreting and measurements of concealed works before their actual concealment. He shall be responsible for recovery of Board of Members materials supplied to the contractor for the purpose of execution of the work. Test check of computations shall also be carried out by him for the items scrutinized by him. The Check Measurement shall be done after initial computation of the entries made in the MB. The Check Measuring Officer shall put his signature below the entries made in the MB with the declaration "Check measured by me". The Check Measuring Officer shall be an officer not below the rank of Asstt. Engineer.

#### 3.24.3 Counter-Signing Officer:

The Counter Signing Officer shall check at least 25% of the entries as well as value of the work and shall be responsible for the overall liabilities of payment to the contractor. The countersigning officer shall put his signature below the entries made in the MB with the declaration "check-measured and countersigned by me". The Countersigning Officer shall be an Officer not below the rank of EE.

#### 3.24.4 Passing Officer:

The Passing Officer shall be responsible for the overall accuracy of the bill sent for payment.

#### 3.24.5 Security Deposit:

Security Deposits are deducted from Running Bills including final bill. When it is decided to accept bank guarantees as security against advances, performances, etc. the same shall be executed as per the approved proforma. The EE shall maintain a bank guarantee register which shall show the dates of expiry, revalidation and return of the bank guarantee submitted.

The EE of the concerned Division shall be primarily responsible for issuing notice to the contractors and/or bankers well in advance to avoid lapses of such guarantees. Since in the event of revalidation not done by the contractor in time EE shall take appropriate actions against the defaulting contractor. All concerned Officers of the

executing Dept./ Division must ensure that there is no lapse in encashment of Bank Guarantee. Since if a Bank guarantee is not enforced within the time stipulated in the Bank Guarantee the beneficiary loses all the rights under the Bank Guarantee.

A parallel record in respect of bank guarantee showing the dates of expiry and revalidation shall also be maintained at the offices of Finance Dept./Division for counter check.

#### 3.24.6 Submission of FDR for EMD / Performance Security

A Fixed Deposit Receipt (FDR) is a document issued by a bank or financial institution when fixed deposit account is opened. The FDR serves as a record of investment and contains important information about the fixed deposit, such as the deposit amount, interest rate, and maturity date, and name of the person on whose favour the FDR is pledged.

It should be ensured that the FDR is pledged in favour of FA&CAO, NMPA. It is in the tenderer's own interest to keep the FDR valid as long as it is required. There is no need for the Department to insist upon the tenderer keeping the FDR valid, since he can encash the FDR only when it is assigned back to him by the tender inviting authority.

#### 3.24.7 Excess quantity/Extra/Additional/Substituted items:

The following procedure is to be followed for payment of bills in respect of above:

- i. In cases involving quantitative increase in items already tendered (i.e. excess quantities) the additional works up to value of 10% of the value of the tender originally accepted can be got done through the working contractor at the accepted rates with the approval of the competent authority.
- ii. The works arising out of extra/additional items and those arising out of substitution or tendered items can be got done through the working contractor with the approval of the Competent Authority when such items can be executed out of savings due to elimination of corresponding items from the original tender or otherwise. In case where such saving is not available such extra/substituted items can be got done through the working contractors with the approval of the Competent Authority at the rate to be fixed in accordance with the terms of the contract.

- iii. In case where majority of the items of any tender call for substitution due to change of specification or any other technical reasons prior sanction shall have to be obtained from the CE to give effect to such changes for the purpose of assessing extra/additional/substituted items of work it should be kept in view that such works are necessary for execution and completion of the work which was not originally envisaged at the time of preparation of the estimate/tender.
- iv. It is necessary that the analysis of rates prepared by the engineer for extra or substituted items are entered in special rate memo for sanction of CE.

#### 3.24.8 Work done through hiring of Daily Labours:

Hiring of daily labours should kept to a minimum. However, in case of urgent works and works of petty nature engagement of daily labour from readily available contractors may be permitted with the approval of CE/Dy.CH/CH. The contractors shall be paid for labours employed on the basis of minimum wage for unskilled workers as per Govt. Notification plus 10% as overhead and profit for unskilled and appropriate rates for skilled and semi-skilled workers. Particulars of different categories of labours engaged shall be recorded by the Measuring Officer date-wise in the daily report (DR) sheet showing the number of labours of each category such as carpenter, mason, mazdoor etc. engaged in the work and the corresponding hours during which the work was actually done by them. This record shall form the basis for the purpose of payment, the name of the work and estimate no shall be recorded at the appropriate place of the DR sheet. The contractors signature shall be obtained on the DR sheet on the same day as a token of his concurrence/acceptance. The Daily Labour Sheet duly signed by the Measuring Officer shall be placed before the Check Measuring Officer on the same day for his counter signature as well as to enable him to keep a check on the expenditure. The signatures of the contractor, Measuring Officer as well as Check Measuring Officer on the DR sheet is mandatory.

The Contractor being the immediate employer of the labour hired by the Port Authority, he shall be responsible for observance of the Laws/rules applicable to such Contract Labour.

### 3.25 Miscellaneous Notes:

#### 3.25.1 Extension of time beyond the date of expiry of the tenure of the contract:

##### a) Where time is the essence of the Contract:

- i. No work should be done under a contract beyond the date of expiry of the tenure. Wherever it is considered that the work has to be continued beyond the date of expiry of the tenure timely action should be taken for renewing the contract for the further period required, after suitable review of the provisions of the old contract to see whether any modifications therein are required.
- ii. Extension is to be granted with a provision to deny any increase in price under the price variation clause coming into force during such an extended period. The Board of Members will however take the benefit of any reduction in price in terms of the price variations clause taking place during the aforesaid period.
- iii. L.D. clause should be imposed as a compensation to the Board of Members as per G.C.C.
- iv. Extension of time will be granted by the competent authority as delegated from time to time.

##### b) Where time is not the essence of the Contract:

- i. Contractors should be allowed to continue the work beyond the tenure of the contract.
- ii. Extension of time will be allowed by the Engineer with imposition of L.D. as Compensation to NMPA. The Engineer shall, however, obtain post-facto sanction of the appropriate authority.
- iii. A reasonable time for completion of the work should be allowed, stating that the extended time is the essence of the contract.
- iv. Extension is to be granted with a provision to deny any increase in price under the price variation clause coming into force during such an extended period. The Board of Members will however take the benefit of any reduction in price in terms of the price variation clause taking place during the aforesaid period.

### 3.25.2 Termination of Contract:

Decision regarding termination of contract and execution of balance work at the risk and expenses of the defaulting contractor, shall not be taken at the level lower than that of the authority who has signed the contract agreement. This should be done in accordance with the provisions of GCC .

### 3.25.3 Sale of tender documents for residual/left over works:

Sale of tender papers in respect of residual/left over works of a contract shall not be made to the same contractor who failed to execute the work. It is necessary to ensure that the tenders for such works are freely invited.

### 3.25.4 Discharge of Tenders:

Tenders, once invited, may be discharged with the recommendation of tender committee and approval of the authority who is competent to accept the same. The reasons for such decisions shall be recorded in writing and an appropriate note in this regard shall be incorporated by the tender inviting authority in the proposal seeking approval to the discharge of the tenders.

### 3.25.5 Re-invitation of Tenders:

In case of re-invitation of tenders all the formalities mentioned here-in-before shall be observed. However, if not bids are received, the tenders shall be re-invited with approval of the Chief Engineer.

### 3.25.6 Performance Report of Contractors:

For all urgent and important works a confidential report as to the performance of the Contractor shall be prepared by the concerned EE highlighting the following points:

Sl No.	Criteria of evaluation	Maximum Marks	Marks obtained
1	Timely completion of work (Work completed within the scheduled date of completion)	20	
2	Professional (i.e. technical) ability including quality control (Technical Competency Supervision of work, testing, ability to execute specialized works etc.)	10	
3	Contract Management (Planning of execution adhering to program schedule, procurement material, maintenance of stock etc.)	10	
4	Compliance to labour laws and regulations (payment of wages and other welfare measures to workmen, working time etc.)	10	



5	Compliance to safety, environment protection measures (providing barriers and barricades, providing PPE, maintain clean and hygiene condition at site etc.)	10	
6	Coordination and response (Coordination with department staff and other contractors, following instructions etc.)	10	
7	Organizational setup (Permanent Office space, permanent manpower etc.)	10	
8	Tools and machinery (owning or hiring require machinery, working conditions, availability at site etc.)	10	
9	Maintenance of records and submissions (submission of reports, labour records, preparation of bills etc.)	10	
	Total Marks	100	

The performance of the contractor may be evaluated on completion of each work and the marks obtained by the contractors may be informed to the contractors regularly.

A minimum marks (say 40%) may be fixed below which the bids of the contractors will not be considered for evaluation for a certain period.

### 3.26 Dispute Resolution Mechanism

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

If a dispute of any kind, whatsoever, arises between the procuring entity and contractor in connection with or arising out of the contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after the repudiation or termination of the contract, including any disagreement by either party with any action, in action, opinion, instruction, determination, certificate or valuation of the

Engineer; the matter in dispute shall, in the first place, be referred to the Dispute Resolution Board.

If the Contractor believes that a decision taken by the Chief Engineer (Civil) or his Representative was either outside the authority given to the Chief Engineer (Civil) or his Representative by the Contract or that the decision was wrongly taken or there is no decision within a calendar month, the decision shall be referred to the Conciliation Settlement Committee (CSC) to be Constituted by the Indian Ports Association as per the guidelines dated 24.09.2021 within 30 days of the notification of the Chief Engineer (Civil) or his Representative decision or upon expiry of a calendar month as the case may be.

#### 3.26.1 Amicable Settlement/ Conciliation and Settlement Committee

Disputes of any kind arising between the Board of NMPA and the Contractor in connection with, or arising out of the Contract or the execution of the contract whether during the execution of the contract or after the completion and whether before or after repudiation or termination of the Contract, including any dispute as to any opinion, decision, instruction, determination, certificate, payment, or valuation under the contract, the matter in dispute shall in the first place, be referred in writing to the Chief Engineer (Civil) NMPA or his nominee/representative and an attempt shall first be made by all the parties to settle such disputes amicably by serving a copy of such reference in writing to the other party and such reference shall state that it is made pursuant to this clause.

If the Contractor believes that a decision taken by the Chief Engineer (Civil) or his Representative was either outside the authority given to the Chief Engineer (Civil) or his Representative by the Contract or that the decision was wrongly taken or there is no decision within a calendar month, the decision shall be referred to the Conciliation Settlement Committee (CSC) to be Constituted by the Indian Ports Association as per the guidelines dated 24.09.2021 within 30 days of the notification of the Chief Engineer (Civil) or his Representative decision or upon expiry of a calendar month as the case may be.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Principal Employer shall give effect forthwith to every such decision of the Chief Engineer (Civil) unless and until the same shall be revised, as hereinafter provided, in a CSC or an arbitral award.

Provided that, unless the parties otherwise, have exhausted the above remedies under the amicable Settlement proviso and the CSC, the parties shall not invoke arbitration before the expiry of Thirty days after the day on which the notice of failure to settle such dispute was given by the CSC.

#### 3.26.2 Arbitration:

In the event of disputes between the contractor and the Board of Members in a contract the matter may be referred to arbitration as provided for in the G.C.C. The Arbitration and Conciliation Act 1996 shall apply for all such arbitrations. When, however, a contractor has received all payments in respect of all his bonafide claims and demands a reference to arbitration, the Board of Members will be justified in refusing arbitration in such cases. It is , however, advisable to take Legal Opinion before finally rejecting the demand for Arbitration.

When Board of Members decide to accept an Arbitration Award it is not necessary to cause an award to be filed in a court in order to make payment to the party concerned. The contractor shall, however, be asked to give in writing their willingness to accept the payment in full and final settlement of all claims" and also furnish a "No claim certificate" before effecting the payment.

In case of an award where the Board of Members have to realise any/amount/money from the contractor, the Board of Members shall, on the merit of the case, decide the course of action to be taken bearing in mind the provisions of the G.C.C. and also the opinion of the Legal Advisor.

It should be mentioned in all agreements/Tender conditions that in case there be any dispute between the contractor and Board of Members, and recourse to arbitration may have to be taken ultimately. The contractor shall not be entitled to claim any alleged damages or consequential loss etc. or interest whatsoever and such alleged claim shall not form part of any arbitration.

#### 3.26.3 Conciliation

Constitution of a conciliation and settlement committee for establishment of a conciliation and settlement mechanism for contractual disputes under the Contract/Agreements with the contractors/ concessionaires / consultants shall be taken up as per the IPA order No. IPA/Legal /CON. Committee/ 2020 dated 04.05.2021 and 13.05.2021

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

#### 3.26.4 SAROD- Society for Affordable Resolution of Disputes

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/ Differences between Major Port Trusts and Concessionaire/ Contractors arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes Ports,(SAROD-PORTS-Ports) has been formed as a society under Societies Registration Act, 1860 with registration.

It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS.

#### 3.26.5 Force Majeure

For all Major work contracts, appropriate Force Majeure clause shall be incorporated on specific approval of the Chief Engineer in individual cases.

### 3.27 Enlistment of Contractors

Enlistment of contractors shall be done in a fair and equitable manner, through online after giving due publicity. A set of rules for enlistment of contractors shall be approved by the Chairman from time to time and enlistment shall be done accordingly. A list of enlisted contractors shall be maintained at tender cell, copies of which shall be made available to divisional offices. Performance of such enlisted contractors should be reviewed periodically. The list of enlisted contractors shall be updated once in every three years. For works or services, estimated cost up to Rs. 5.00 lakhs to be awarded through limited tender notice circulated to the enlisted contractors

#### 3.27.1 Procedure for Enlistment:

- i. Enlistment of contractors should be done by keeping fundamental principles of public procurement in view (especially the transparency principle - transparency, fairness, equality, competition and appeal rights) with the approval of CA after carefully assessing and verifying credentials, capability, quality control systems,

past performance, financial background, and so on, of the contractor/ service provider(s):

- ii. Details of the procedure for enlistment of new firms may be uploaded on the website and also published in the form of a booklet for information of the contractors. Timeframes and criteria for enlistment of new contractors may be clearly indicated;
- iii. New contractor(s) may be considered for enlistment at any time, provided they fulfil all the required conditions.
- iv. While registering the firms, an undertaking may be obtained from them that they will abide by the rules and regulations enclosed with the application with a clear warning that, in case of transgression of the code of integrity, their names are likely to be deleted from the list of contractors, besides any other penalty or more severe action as deemed fit; and
- v. Along with the new / renewal application for enlistment, the contractors should also be asked to declare that, if awarded a contract in any LTE in which they participate, they bind themselves to abide by the Procuring Entity's General Conditions of Contract (GCC). Such GCC should be part of the application.

#### 3.27.2 Eligibility for enlistment

- i. Any firm, situated in India or abroad, which is in the business of providing goods/ works/ services of specified categories of interest, shall be eligible for enlistment;
- ii. Contractors should possess valid Digital Signature Certificate (DSCs) Class III b with the company name at the time of enlistment/ renewal, so as to enable them to participate in e-procurements
- iii. Firm, against whom punitive action has been taken, shall not be eligible for re-enlistment during the currency of punitive action. Enlistment requests may not be entertained from such firms, stakeholders of whom have any interest in de-Enlisted/ banned firms;

#### 3.27.3 Rules of enlistment

- i. The application form, complete in all respects and prescribed documents shall be submitted by the firms to the registering authority. The enlistment

application form, duly filled-in, when received from the firms shall be scrutinised carefully for assessing the capacity and capability of the firms including credentials, capability, quality control system, past performance, financial background, and so on, of the applicant. References shall be made to other firms of standing of whom the applicant firm claims to be a contractor. Likewise, the applicant firm's bankers may also be requested to advice about the financial standing of the firm. Enlistment of contractors should be done with the approval of CA.

- ii. In cases where the firm is not considered capable and enlistment cannot be granted, the concerned authority shall communicate the deficiencies and shortcomings direct to the firms. Where a request for re- verification and review is made by the firm, along with any fee as prescribed and within the period prescribed by the department, review shall be undertaken. Requests for re-verification after expiry of the said period would be treated as a fresh application and processing fee, if any prescribed, charged accordingly;
- iii. It should be mentioned in the letter of enlistment that the enlistment is valid for a period of three years and would be considered for extension based (on application by the contractor/ service provider) on satisfactory performance of the firm. However, the enlistment would be initially treated as provisional and it would be treated as confirmed only after the firm has satisfactorily executed one contract of the relevant category and value from Procuring Entity. The extension of validity of enlistment is not a matter of right and Procuring Entity reserves the right not to extend such enlistment without assigning any reason;
- iv. All Enlisted contractors should be allocated a unique enlistment number. Once the firms are enlisted, a circular shall be issued by the enlistment authority indicating the names and addresses of the enlisted contractors with details of the requirements and monetary value they will execute as well as the validity period, and so on, for which they are enlisted;
- v. Performance and conduct of every enlisted contractor is to be watched by the concerned department. Procuring Entity should also reserve the right to remove firms who do not perform satisfactorily, even during the validity of enlistment (after giving due opportunity to the contractor to make a representation) if they fail to abide by the terms and conditions of the enlistment

or fail to execute contracts on time or do substandard work or make any false declaration to any government agency or for any ground which, in the opinion of the government, is not in public interest;

- vi. Procuring Entity shall retain its option to reassess firms already enlisted, at any later date, to satisfy itself about the current financial soundness/ credit worthiness, facilities available, and so on. Thereafter, Procuring Entity may decide to retain them as enlisted contractors for the requirements and monetary limit earlier considered or with necessary changes as deemed fit. In case of adverse reports from the team of Procuring Entity officers who reassess the firm, Procuring Entity shall delete such firm from the enlisted contractors list;

### 3.28 Debarment

#### 3.28.1 Rule 151 of GFR, 2017:

- i) A bidder shall be debarred if he has been convicted of an offence
  - a. under the Prevention of Corruption Act, 1988; or
  - b. 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.
- ii) A bidder debarred under sub-section (i) 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 will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.
- iii) 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.
- iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.

#### 3.28.2 Guidelines on Debarment of firms from Bidding

- 1. The guidelines are classified under following two types:-
  - i. In cases where debarment is proposed to be limited to a Department, the appropriate Orders can be issued by the department itself, thereby banning all its business dealing with the debarred firm.

- ii. Where it is proposed to extend the debarment beyond the jurisdiction of the Department i.e. covering to all the Departments, the requisite Orders shall be issued by the Finance Department

**Definitions**

- i. 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.
  - ii. 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:
    - a. Whether the management is common;
    - b. Majority interest in the management is held by the partners or directors of banned/ suspended firm;
    - c. Substantial or majority shares are owned by the banned/ suspended firm and by virtue of this it has a controlling voice.
    - d. Directly or indirectly controls, or is controlled by or is under common control with another bidder.
    - e. All successor firms will also be considered as allied firms.
    - f. The terms "banning of firm", 'suspension', 'Black-Listing' etc. convey the same meaning as of "Debarment".
2. Orders for Debarment of a firm(s) shall be passed by a the Department, keeping in view of the following:
- i. A bidder or any of its successors may be debarred from participating in any procurement process for a period not exceeding two years.
  - ii. Firms will be debarred if it is determined that the bidder has breached the code of integrity as per Rule 175 of GFRs 2017.
  - iii. 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 Department, 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.



- iv. It shall not be circulated to other Departments. It will only be applicable to all the attached / subordinate offices etc. of the Department issuing the debarment Order.
  - v. The concerned Department before issuing the debarment order against a firm must ensure that reasonable opportunity has been given to the concerned firm to represent against such debarment (including personal hearing, if requested by firm).
  - vi. Department 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 of Secretary concerned of Ministry/Department.
  - vii. Department will maintain list of debarred firms, which will also be displayed on its website.
  - viii. Debarment is an executive function and should not be allocated to Vigilance Department.
3. It is possible that the firm may be debarred concurrently by more than one Department. Departments at their option may also delegate powers to debar bidders to their Attached Offices. In such cases, broad principles for debarment in para 2 as above are to be kept in mind. Debarment by such bodies 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. In case of debarments done by CPSUs, revocation of the debarment orders before expiry of debarred period should be done only with the approval of Chief Executive Officer of concerned CPSUs etc.
4. Debarment across All Ministries/ Departments
- i. Where a Department is of the view that business dealings with a particular firm should be banned across all the Departments by debarring the firm from taking part in any bidding procedure floated by the Central Government Departments, the 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.

- ii. 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.
  - iii. 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 be given to the firm to represent against the debarment, such debarment requests received from Ministries/ Departments shall be rejected.
  - iv. 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.
  - v. 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.
  - vi. DoE will maintain list of such debarred firms, which will be displayed on Central Public Procurement Portal.
5. Revocation of Orders
- i. 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.
  - ii. 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.
6. Other Provisions (common to both types of debarment)
- i. 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.

- ii. 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.
- iii. Contracts concluded before the issue of the debarment order shall, not be affected by the debarment Orders.
- iv. 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”.
- v. Debarment in any manner does not impact any other contractual or other legal rights of the procuring entities.
- vi. The period of debarment shall start from the date of issue of debarment order.
- vii. The Order of debarment will indicate the reason(s) in brief that lead to debarment of the firm.
- viii. Ordinarily, the period of debarment should not be less than six months.
- ix. 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.
- x. All Ministries/ Departments must align their existing Debarment Guidelines in conformity with these Guidelines. Further, bidding documents must also be suitably amended, if required.

\*\*\*\*\*

3.29 Annexures

Annexure A

नव मंगलूर पत्तन न्यास  
NEW MANGALORE PORT AUTHORITY  
CIVIL ENGINEERING DEPARTMENT  
By RPAD

No. «File No»

Date: «Date\_of\_work\_Order»

**LETTER OF ACCEPTANCE**

To:

«L1 Bidder»

Sir,

Sub: «Name\_of\_work» – Letter of Acceptance – Reg.

Ref: Your tender ID. «Bid\_ID» opened on «Technical\_bid\_opened\_on»

\$\$\$\$\$\$

Your tender opened on «Technical\_bid\_opened\_on» for the work of “«Name\_of\_work»” for an amount of **Rs. , («Amount\_in\_Words\_after\_rebate», (Excluding GST) at «percent\_above\_of\_below\_after\_rebate»** the estimated amount put to tender is hereby accepted, subjected to the terms and conditions of the tender document.

You are requested to attend the office of EE («Executive\_Engineer\_») within seven days on receipt of this letter with a Karnataka State Government stamp paper of Rs. 100/-value for executing necessary Agreement.

It is to be noted that you have to complete the work in all respects within «**Completion\_Period\_in\_words\_**» which will be reckoned from «**Reckoned\_from\_**» and date of completion of the work is «**Date\_of\_completion**». However, no work shall be commenced before signing of contract agreement.

Your attention is drawn to Cl. No. 34 of the Instructions to tenderer. You are required to furnish within 21 days of receipt of the Letter of Acceptance, a Performance Security, for a sum of Rs. «**Performance\_Guarantee\_amount**»/- («**Performance\_Guarantee\_amount\_in\_words**») in the form mentioned in the clause. Any delay in submission of performance security will attract penalty as per Sl. No. 20 of the Contract data. Please note that security deposit shall be recovered from your bills as per the Conditions of Contract.

As per Clause No. 32 of the Instructions to tenderer, within 21 days of receipt of Letter of Acceptance, you are required to furnish the performance security and sign the Agreement with the Employer. The work shall be commenced only after signing of contract agreement. Any delay in signing of Agreement will be considered as breach of contract and will attract action as per clause No. 59 of Conditions of the Contract.

Please note that work will have to be carried out in accordance with the General Conditions of Contract and Technical specification for materials workmanship and the Bill of Quantities pertaining to your tender. Payment will however be made to you at your agreed rate on the basis of actual measurements of the finished work subject to the recoveries to be made from your bill as per your tender stipulations.

You are required to comply with the provisions of Contract Labour (Regulations & Abolition) Act of 1970 and the Contract Labour (Regulation & Abolition) Central Rules 1971 and Minimum wages Act &ESI & PF Rules thereof, Building and other Construction Workers Welfare Cess Act 1996 and the Rules thereof and other related labour laws of Central and State Government.

As per clause 66 Insurance of Works and Contractor's Equipment; you may undertake safety of contract labours by executing indemnity bond as prescribed in Annexure-12 of the tender document

The contractor shall observe all statutory & legal requirements by Central & State Government applying to the work as well as any local regulations applying to the site.

Tax Invoice: The invoice with respect to supplies should contain following information:-

- Name of the Customer : New Mangalore Port Authority

- GSTIN of the Customer : 29AAALN0057A2ZG
- All other information as specified in GST act and GST tax invoice rules such as SAC code, Supplier address, Supplier GSTIN, IRN number QR code etc. Noncompliance of the above result in rejection of invoice.

The Invoice should be uploaded to GST website on monthly basis with in the due date as specified by GST act. Input tax credit lost by Port due to any error, omission or non-filing of return will be recovered from any amount due to the supplier.

Please start the work in consultation with EE(«Executive\_Engineer\_»), all future correspondence with him directly or to SE(C-I) / Dy.CE(C) / CE(C).

Please submit programme of the works within 14 days on receipt of this communication.

Please acknowledge the receipt of this work order

Yours faithfully,

Superintending Engineer («SECICII»)

Copy for information and necessary action:

1. The Original Agreement
2. The Asst. Labour Commissioner (Central), Kadri Amenity Block, 1<sup>st</sup> Floor, Next to BSNL Staff Quarters, Kadri Telephone Exchange Compound, N.H 66, Padavu, Mangalore – 575 004.  
E-mail : alccmlr-ka@nic.in
3. Employees Provident Fund Organization, Bhavishya Nidhi Bhavan, Post Bag No. 572, Silva Road, Highlands, Mangalore – 575 002  
E-mail : ro.mangalore@epfindia.gov.in
4. The Dy. Director, Employee State Insurance Corporation, Sub Regional Office, 1<sup>st</sup> Floor, City Point, Kodialbail, Mangalore – 575 003.  
E-mail : dir-mangalore@esic.nic.in
5. Copy to the Financial Adviser & Chief Accounts Officer, NMPA for kind information. The tender has been accepted by Dy. Chairman, NMPA, dtd. «Approved\_on» and finance concurrence No.«FC\_No1» dated «FC\_Date1». The bidder has submitted Udyam Registration Certificate for exemption of EMD.
6. The Superintending Engineer («SECICII») for kind information, request to fill the FORM III certification of principal employer.
7. The Resident & Audit Officer, NMPA for kind information
8. The Chief Vigilance Officer, NMPA for kind information
9. The Chief Engineer (Civil) for kind information
10. The Executive Engineer («Executive\_Engineer\_»), for necessary action to execute agreement.
11. The safety officer for information through Traffic Manager
12. AE (C), through EE («Executive\_Engineer\_») for necessary action.

The expenditure may be debited to the Head of Account «Head\_of\_Account» under the technically sanctioned estimate for Rs. «Estimate\_Amt\_Rs\_in\_figures»/- vide CER/«CER\_Noyyyyyy» vide N.F No. «File\_No», FC No: «FC\_No» dtd: «FC\_Date»

Superintending Engineer («SECICII»)

FORM III

[Under rule 21(2) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 and rule 7(3) of the Inter-State Migrant Workmen (Regulation of Employment and condition of Service) Central Rules, 1980]

Form of Certificate by Principal Employer

Certified that

1. I have engaged the applicant «L1» as a contractor in my establishment for the work of «Name\_of\_work» to be carried out from «**Reckoned\_from\_**».
2. I undertake to be bound by all the provisions of the Contract Labour (Regulation and Abolition) Act, 1970(37 of 1970) and the Contact labour (Regulation and Abolition) Central Rules. 1971<sup>\*</sup>/~~the inter State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979(30 of 1979) and the inter state Migrant Workmen (Regulation of Employment and condition of Service) Central Rules, 1980<sup>\*</sup>~~ in so far as the provisions are applicable to me in respect of employment of contract labour/~~Inter State Migrant Workmen<sup>\*</sup>~~ by the applicant in my establishment.
3. The engagement of contract labour in the said work is not prohibited under section (1) of section 10 of the contract labour (Regulation and Abolition) Act.1970 (37 of 1970) or an award or a settlement.\*

Signature of the Principal Employer

Principal Employer («SECICII»)  
New Mangalore Port Authority  
Panambur-575010  
No:

E-mail :

Dated: «Date\_of\_work\_Order»

Place: Panambur

\*please strike off whichever is not applicable



FORM V1-B

NOTICE OF COMMENCEMENT OF CONTRACT WORK

(See Rule 81(3))

1. Name of the Principal Employer and Address:

Principal Employer  
Superintending Engineer («SECICII»)  
New Mangalore Port Authority  
Panambur-575010

2. No.& date of certificate of registration:

No: 22/1997

3. We, hereby intimate that that contract work “«Name\_of\_work»” Given to «L1», will commence with effect from «Reckoned\_from\_».

Signature of the Principal Employer

E-mail :

Date: «Date\_of\_work\_Order»

To:

The Asst. Labour Commissioner (Central),  
Kadri Amenity Block, 1<sup>st</sup> Floor,  
Next to BSNL Staff Quarters,  
Kadri Telephone Exchange Compound,  
N.H 66, Padavu, Mangalore – 575 004.  
E-mail : alccmlr-ka@nic.in

FORM VII

[Under rule 25(2)(viii) and rule 81(3) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 and rule 26(3) of the Building and other Construction Works' (Regulation of Employment and condition of Service) Central Rules, 1998]

Notice of commence of work

1	Name of the principal employer under the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) Employer under the Building and other Construction Workers (Regulation of employment and conditions of service Act. 1996 (27 of 1996)	Principal Employer New Mangalore Port Authority Panambur-575010 No: 22/1997
2	LIN/Pan No:	
3	Email ID	
4	Mobile No	
5	Name of the contractor under the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) if applicable)	«L1»
6	LIN/Pan No:	
7	Email ID	
8	Mobile No	
9	No. and date of Certificate of Regulation Licence	
10	Name of the person in-charge of the work	
11	LIN/Pan No. of person	
12	Email ID	
13	Mobile No	
14	The nature of work involved and the facilities, including any plant and machinery provided in the case of a building or other construction work.	«Name_of_work»
15	The arrangements for the storage of explosives, if any, to be used in the building or other construction work.	

I we hereby intimate that the work «Name\_of\_work» given to «L1» is likely to be commence the work with effect from «**Reckoned\_from\_**»

Signature of the contractor

E-Mail:

To

The Asst. Labour Commissioner (Central),  
Kadri Amenity Block, 1<sup>st</sup> Floor,  
Next to BSNL Staff Quarters,  
Kadri Telephone Exchange Compound,  
N.H 66, Padavu, Mangalore – 575 004.  
E-mail : alccmlr-ka@nic.in

Copy to

Executive Engineer (Mtc-I)  
Civil Engineering Department  
New Mangalore Port Authority  
Panambur – Mangalore - 575010

**LETTER OF SUBMISSION - COVERING LETTER  
(ON THE LETTER HEAD OF THE BIDDER)**

Date:

To

The Executive Engineer (Civil),  
New Mangalore Port Authority,  
Administration Building,  
Panambur, Mangalore – 575 010

Sir,

Sub: The work of “.”

Being duly authorized to represent and act on behalf of ..... (Hereinafter referred to as “the Bidder”) and having reviewed and fully understood all of the requirements of the bid document and information provided, the undersigned hereby apply for the project referred above.

We are submitting our Bid enclosing the following, with the details as per the requirements of the Bid Document, for your evaluation.

- i. Tender Document along with Addendum No ----,
- ii. Power of Attorney - (Annexure - 2)
- iii. Organization Details - (Annexure - 3)
- iv. Details to fulfill the “Minimum Eligibility Criteria” and certificates - (Annexure 4)
- v. Average Financial turnover over the last three financial year - (Annexure 5)
- vi. List of plant and equipment – (Annexure - 7)
- vii. Declaration – (Annexure – 8)
- viii. Bid Security / EMD Paid by RTGS/NEFT vide UTR No.....dtd. .... of (name and address of the branch).
- ix. Banker’s Details – Annexure 10 & 11
- x. Tender fee paid by NEFT vide vide UTR No.....dtd. .... of (name and address of the branch).
- xi. Copy of valid ESI, PF & GST Registration certificate.

Signature  
(Authorised Signatory)

**Annexure – 2**

ON STAMP PAPER of Rs 100/-

“Name of work”

FORMAT OF POWER OF ATTORNEY (in original)

In favour of signatory/s to the Tender, duly authenticated by Notary Public.

POWER OF ATTORNEY IN FAVOUR OF ----- (Name, Designation, Company name)

TO ALL TO WHOM THESE PRESENTS shall come, I, (Name & address of the authorized person to sub-delegate/delegate powers, delegated on him by the Board of Directors) do hereby sub-delegate/delegate, in terms of the powers delegated to me by the Board of Directors, ----- (name of the Co.) to Shri ----- (name, designation & address of the Attorney) the following:

NOW KNOW YE AND THOSE PRESENTS that I, (Name & address of the authorized person to sub-delegate/delegate powers, delegated on him by the Board of Directors), do hereby authorize and empower Shri ----- (name, designation & address of the Attorney) to do severally amongst others, for the purpose of carrying on our business, the following:

- a) To represent lawfully the (name of the Co.) for obtaining bid/tender documents, prepare, sign, execute and submit tenders for execution of (Name of work) or any other works incidental to such construction works.
- b) To discuss the technical and financial matters, negotiate and accept prices and take decisions regarding terms and conditions and sign agreements and contracts and also to bind the (name of the Co.) to the arbitration clause included in the contract.
- c) For all or any of the purposes here of to sign and deliver or otherwise execute such deed or deeds, transfer or transfers, endorsement or endorsements and to perform such other acts, matters, things as the Attorney shall consider requisite or advisable as full and effectively as the Company could do, if present and acting there.

I, (Name & address of the authorized person to sub-delegate/delegate powers, delegated on him by the Board of Directors) in terms of the powers delegated to me by the Board of Directors of (name of the Co.), do hereby agree that all acts, deeds and things done by the said Attorney by virtue of this power of attorney, shall be construed as acts, deeds and things done by the Company.

I, (Name & address of the authorized person to sub-delegate/delegate powers, delegated on him by the Board of Directors), further undertake to ratify and confirm whatever our said

attorney shall do or cause to be done for the Company, the said Company, in the premises, by virtue of the powers hereby given.

WHEREAS, this sub-delegation is signed and delivered to Shri ----- (name & designation of the Attorney), on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Two thousand \_\_\_\_\_).

WHEREAS, even though this sub-delegation is signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Two thousand \_\_\_\_\_), will have effect from the date he signs and receives this delegation.

IN WITNESS WHEREOF, I, (Name & address of the authorized person to sub-delegate/delegate powers, delegated on him by the Board of Directors) has, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Two thousand \_\_\_\_\_) set my hands and subscribed my signature unto this instrument.

SIGNED AND DELIVERED ON

\_\_\_\_\_ BY

(Name of authorized person to delegate powers)

WITNESS:

SIGNED AND RECEIVED ON

\_\_\_\_\_ BY

(Name & designation of Attorney)

“Name of work”

**ORGANIZATION DETAILS**

CONTACT No.:

NAME OF APPLICANT:

1. Name of the Owner:
2. Address:  
Telephone No. :  
Fax No.
3. Description of Applicant  
(for e.g. General, Civil Engineering  
Contract or Joint Venture/Consortium etc.)
4. Registration and Classification of Contractors:
5. Name and address of bankers:
6. Number of years of experience as a general contractor:-

In own Country:

Internationally:

7. Number of years of experience as a sub-contractor:

Name and Address of partners or associated companies to be involved in the project and whether Parent/Subsidiary/other:

8. Name and address of any associates knowledgeable in the procedures of customs, immigration and local experience in various aspect of the project etc.
9. Name and address of the companies / Sub-contractors who will be involved in the execution of works, namely:

Signature  
(Authorised Signatory)

**NEW MANGALORE PORT AUTHORITY**

“Name of work”

Tenderer shall furnish Details of “eligibility works experience” as per Clause 12(a) of Minimum Eligible Criteria (MEC) of Instruction to Tenderer and certificates in the following format (Client Certificates/work completion certificates or any other documentary evidences with respect to the eligibility work)

**ELIGIBLE ASSIGNMENT DETAILS FOR MEC**

Assignment Number:

Sl. No	Description	Bidder to fill up the details here
1	Name and Address of the Client	
2	Title of the Eligible Assignment	
3	Date of completion of the Eligible Assignment	
4	Project Cost	
5	Reference No of the enclosed work order	
6	Reference No of the enclosed Client work Completion Certificate	
7	Reference No of any other documentary evidence; if enclosed.	
8	Name, telephone no, telefax no and email address of the client’s representative	
9	Description and Scope of Work	

Signature  
(Authorised Signatory)

**Certificate from the Statutory Auditor**

This is to certify that the information contained in Sl. No 4 above is correct as per the accounts of the Applicant and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date: Name and seal of the audit firm:

In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Instructions:

- i. Bidders are expected to provide information in respect of Eligible Assignments in this Section. The assignments cited must comply with the criteria specified Clause No.



12.0(a) Minimum eligibility of the “Instructions to Tenderers”.

- ii. A separate sheet should be filled for each of the eligible assignments.
- iii. The details are to be supplemented by documentary proof (Work order and work completion certificate) from the respective client for having carried out such assignment duly certified by clients.

## NEW MANGALORE PORT AUTHORITY

"Name of work"

## FINANCIAL CAPABILITY

## (A) Net worth &amp; Average Annual Turnover of the Bidder

Net Worth	Turnover			
	Year 1	Year 2	Year 3	Average

Instructions:

Net Worth = (Subscribed and Paid-up Equity + Reserves) - (Revaluation reserves + Miscellaneous expenditure not written off + depreciation not provided for). Year 1 will be the Financial Year 2018-19. Year 2 shall be the year immediately preceding Year 1 and Year 3 shall be the year immediately preceding Year 2. The Bidder shall provide audited Annual Reports as required under this Bid Document.

Net worth & Annual turnover of the bidder shall be submitted duly verified by Chartered Accountant or Competent Authority.

## (B) (Here specify proposed sources of credit line to meet the Cash flow demand for the work)

Source of Credit line	Amount

There should be a letter from the Bank mentioning that line of credit offered is specifically for this work/contract.

NOTE: If the Tenderer intends to meet the "Cash Flow Demand" for the project through their internal resources without availing the loan of credit, a specific mention to be made to this effect and proof for such resources shall be enclosed.

Certified by C.A  
(Authorised Signatory)

Signature

NEW MANGALORE PORT AUTHORITY

“Name of work”

LIST OF ONGOING WORKS IN HAND AT NMPA

The Tenderer shall furnish in the format given below details of works being carried out by him at the time of bidding in NMPA

Sl.No.	Name of work	Work order No. and Date	Value of Work Order in Rs.	Average annual financial turnover as per MEC for the work

**Contractor**

**Annexure – 6A Applicable only in specialized job**  
NEW MANGALORE PORT AUTHORITY

“Name of work”

DETAILS OF PROPOSED APPROACH & METHODOLOGY

Bidder shall furnish a detailed method statement (Technical Note) for carrying out of the works, along with a construction programme showing sequence of operation and the time frame for various segments of temporary and permanent works.

Signature  
(Authorised Signatory)

## NEW MANGALORE PORT AUTHORITY

“Name of work”

--

## PLANT AND EQUIPMENT PROPOSED FOR THE WORK

Please indicate the main plant and equipment considered to be necessary for undertaking the work and whether this plant is ready in ownership or will be purchased or hired.

Description of equipment	Requirement no. / capacity	Owned / leased / to be procured	Nos / capacity	Age / condition	Remarks (from whom to be purchased)	At what stage of contract period the equipment will be available

Note: The equipment indicated in the above statement will form part of contract agreement and as such the bidders are requested to indicate the availability of the equipment at site and at what stage of the construction period in a separate column.

Signature  
(Authorised Signatory)

**NEW MANGALORE PORT AUTHORITY**

“Name of work”

**DECLARATION**

We M/s. (Name & address of the bidder) hereby declare that:-

- i. I have read the tender document Vol. I (Section I to III) Vol.II (Section IV and V) and Vol.III (Section V and VII) and agreed to the terms and conditions mentioned therein.
- ii. All details regarding construction plant, temporary work and personnel for site organisation considered necessary and sufficient for the work have been furnished in the Annexures to Conditions of Contract in Volume I and that such plant, temporary works and personnel for site organisation will be available at the site till the completion of the respective work.
- iii. No conditions are incorporated in the financial bid. In case any conditions are specified in the financial bid, the tender will be rejected summarily without making any further reference to the bidder.
- iv. We have not made any payment or illegal gratification to any persons/ authority connected with the bid process so as to influence the bid process and have not committed any offence under PC Act in connection with the bid.
- v. We shall undertake that, the Employer i.e. NMPA is indemnified against all damages or compensation payable at Law in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or Sub-Contractor against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto and the Employer shall be at liberty to deduct or adjust from the Contactor's bills an amount that Employer may be called upon to pay towards claims, demands, proceedings, costs, charges and expenses Whatsoever in respect of or in relation to any accident or injury referred to above without any reference to the Contractor. The

contractor shall execute indemnity bond in the prescribed format as per **Annexure - 12**

- vi. We shall comply with all the Central State and Municipal Laws and Rules and we shall be solely responsible for complying with the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 & the contract labour (Regulation & Abolition) Karnataka Rules 1974 and rules there under and the enactments that may be applicable including ESI Act, the payment of wages act, Provident Fund Act, the Minimum Wages Act, the Factory's Act. The Workmen Compensation Act or any other applicable legislation and the Municipal by-laws or other statutory Rules and Regulations whatsoever in force if these are applicable. Any obligations finding or otherwise missed under any statutory enactments, rules & regulations there under shall be the responsibility of the Contractor and the NMPA will take no responsibility for the same. The Contractor should take Workmen's Compensation Policy for his Workers, who are not covered under ESI and submit the same to the EIC immediately after commencement of the work
- vii. We undertake that, we are liable to pay all Statutory Compensation to the Labourers/persons engaged by him for the satisfactory execution of the works. If any claim is made against New Mangalore Port Authority on this work, the Port Authority shall have the right to deduct the same from the bill amount payable to the contractor after verification of the validity and if admissible as per rules
- viii. \*We disclose with that we have made / not made payments or propose to be made to any intermediaries (agents) etc in connection with the bid.

\* Note: Delete whichever is not applicable.

Signature  
(Authorised Signatory)

**Annexure-9**

**BID SECURITY (BANK GUARANTEE)**

(NOT APPLICABLE FOR EMD LESS THAN RS FIVE LAKHS)

WHEREAS, \_\_\_\_\_ [Name of Bidder] (hereinafter called "the Bidder") has submitted his bid dated \_\_\_\_\_ [date] for the Providing RCC kerb wall in front of Administrative building over the existing kerb wall.(hereinafter called "the Bid").

KNOW ALL PEOPLE by these presents that We \_\_\_\_\_ [name of bank] of \_\_\_\_\_ (name of country) having our registered office at \_\_\_\_\_ (hereinafter called "the Bank") are bound unto \_\_\_\_\_ [name of Employer] (hereinafter called "the Employer") in the sum of \_\_\_\_\_ 1 for which payment well and truly to be made to the said Employer the Bank binds itself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

THE CONDITIONS of these obligations are:

(1) If after Bid opening the Bidder withdraws his Bid during the period of bid validity specified in the Form of Bid;

or

(2) If the Bidder having been notified of the acceptance of his Bid by the Employer during the period of bid validity:

(a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or

(b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Bidders, or

(c) does not accept the correction of the Bid Price pursuant to Clause 27;

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date \_\_\_\_\_ 2 days after the deadline for submission of Bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Notwithstanding anything mentioned above,



Our liability against this guarantee is restricted to Rs ..... (Rupees ..... only) and unless a claim in writing is lodged with us within 3 months of the date of expiry or the extended date of expiry of this guarantee all our liabilities under this guarantee shall stand discharges.

IN WITNESS WHEREOF this guarantee has been duly executed on this ..... day of ..... 20  
DATE \_\_\_\_\_ SIGNATURE OF THE BANK \_\_\_\_\_

WITNESS \_\_\_\_\_ SEAL \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[Signature, name and address]

\_\_\_\_\_  
\_\_\_\_\_

The Bidder should insert the amount of the guarantee in words and figures denominated in Indian Rupees. This figure should be the same as shown in Clause 16 of the Instructions to Bidders.

30 days after the end of the validity period of the Bid. Date should be inserted by the Employer before the Bidding documents are issued.

**Annexure-10**

**DETAILS OF THE PARTY OPTING FOR REFUND OF EMD THROUGH E-PAYMENT SYSTEM  
FROM NEW MANGALORE PORT AUTHORITY**

Name of the Party :

Bank A/c No :

Account type : (Savings / Current / Overdraft)

Bank Name :

Branch :

IFSC Code Number : (11 digit code)

Centre (Location) :

FAX No. :

E-Mail ID : (For forwarding information of remittance)

Mobile No :

Signature of the Party

**Annexure-11**

**FORMAT FOR FURNISHING BANK INFORMATION FOR e-PAYMENT**

1	Name and full address of the beneficiary	
2	Credit Account No. (Should be full 14 digit)	
3	Account Type (SB or CA or OD)	
4	Name of the Bank	
5	Branch (Full address with telephone No.)	
6	IFSC Code Number (11 digit)	
7	MICR code (Should be 9 digit)	
8	Telephone/Mobile/Fax No. of the beneficiary	Telephone:
		Mobile :
		Fax :
9	Photostat copy of a Cheque	

Signature of the party with seal

Verified the details furnished by the party and it is ascertained that the information furnished are in full shape as required. Xerox copy of a Cheque is also enclosed.

Signature of the HOD/HOO with seal

## Annexure 12

### INDEMNITY BOND

(To be furnished in Stamp paper not less than Rs.100 e-Stamp paper)

This deed of indemnity is executed by ..... herein after referred to as 'Indemnifier' which expression shall unless repugnant to the context or meaning thereof, include its successors, Administrator, representatives and assignees in favour of New Mangalore Port Authority, Panambur, Mangalore 575010, herein after referred to as 'Indemnified' which expression shall unless repugnant to the context or meaning thereof include its representatives and assignees witnesses as to.

Whereas the indemnified herein as awarded to the indemnifier herein a Tender/Contract or for supply of / Construction of ..... on terms and conditions set out interalia in the work order No..... valued at Rs.....

AND Whereas, the clauses No..... of the above mentioned work order provides for indemnifying the indemnified by the indemnifier for any accident, damage or compensation payable to any workmen or other person in the employment of the contractor or any sub contractor during the period of tender/contract.

AND Whereas, the Indemnifier hereby irrevocably agrees to indemnify the indemnified against all damages or compensation payable at law in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the contractor or sub-contractor against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto and the indemnified shall be at liberty to deduct or adjust from the bills payable to the indemnifier by the indemnified for an amount that the indemnified may be called upon to pay towards claims, demands, proceedings, costs, charges and expenses whatsoever in respect of or in relation to any accident or injury referred to above without any reference to the indemnifier. The Indemnifier shall comply with all the Central State and Muncipal Laws and Rules and shall be solely responsible for complying with the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 & the contract labour (Regulation & Abolition) Karnataka Rules 1974 and rules there under and the enactments that may be applicable including ESI Act, the payment of wages act, Provident Fund Act, the Minimum Wages Act, the Factory's Act, the Workmen Compensation Act or any other applicable legislation and the Muncipal by-laws or other statutory Rules and Regulations whatsoever in force if these are applicable. Any obligations finding or otherwise missed under any statutory enactments rules & regulations there under shall be the responsibility of the Indemnifier and the Indemnified will have no responsibility for the same. The

Indemnifier shall obtain Workmen's Compensation Policy for his workers, who are not covered under ESI and submit the same to the ESIC immediately after commencement of the work.

The Indemnifier is liable to pay all Statutory Compensation to the Labourers / persons engaged by him for the satisfactory execution of the works. If any claim is made against Indemnified arising out of this work, the Port shall have the right to deduct the same from the bill amount payable to the Indemnifier after verification of the validity and if admissible as per rules.

The Indemnifier shall ensure the use of PPE such as helmets, safety shoes, nose masks, hand gloves, safety harness or any other equipment as required depending on nature of work by his staff at site.

In addition to complying of the above, the Indemnifier hereby undertakes to indemnify the indemnified against any unforeseen incidents / accidents, which may lead to fatality including death, permanent/ partial disablement, injury, financial loss, legal issues or any other etc of the labourers / workmen's/ staffs of the contractor / sub-contractor for which the indemnified and its officers / representation are in no way responsible.

For.....

INDEMINIFIER

(Signature with Name and Designation)

Company Seal

Station:

Date:

Witness:

1.....

Signature with Name, Designation & Address

2.....

Signature with Name, Designation & Address

**BID SECURITY DECLARATION FORM**

***This format shall be typed in Bidder's Letter Head***

Date: [insert date (as day, month and year)]

No.: [insert number of bidding process]

To: [insert complete name of the Employer]

I/We. The undersigned, declare that:

I/We understand that, according to your conditions, bids must be supported by a Bid security declaration

I/We accept that we will automatically be disqualified from bidding for any contract with New Mangalore Port Authority for a period of 2 (two) years starting from the date of notification from the Employer, if the undertaking of the affidavit submitted by us or our constituents in pursuance to any of the declarations of Letter of Technical Bid or Letter of Price Bid submitted by us are found to be false at any stage during the process of bid evaluation; or I am /We are in a breach of any obligation(s) under the bid conditions, because I/We

- a) have withdrawn/modified/amended, impairs or derogates from the bid, my/our Bid during the period of bid validity specified in the form of Bid; or
- b) do not accept the correction of errors in accordance with the Instructions to Bidders; or
- c) having been notified of the acceptance of our Bid by the employer during the period of bid validity,
  - i. fail or refuse to execute the contract, if required; or
  - ii. fail or refuse to furnish the Performance Security, in accordance with the Instructions to Bidders; or
  - iii. fail or refuse to furnish a domestic preference security, if required.

I/We understand this Bid Security Declaration shall cease to be valid if I am/we are not the successful Bidder, upon the earlier of

- i. the receipt of your notification of the name of the successful Bidder; or*
- ii. 28 (Twenty eight) days after the expiration of the validity of my/our Bid*

*Signed: [insert signature of person whose name and capacity are shown]*

*In the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]*

*Name: [insert complete name of person signing the Bid-security Declaration]*

*Duly authorized to sign the bid for and behalf of [insert complete name of the Bidder]*

*Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of Signing]*

*Corporate seal [where appropriate]*

**Annexure-14**

Format for Self Certification under Preference to “MAKE IN  
INDIA” Policy

(Refer Clause No. 38 of ITT)

**CERTIFICATE**

In line with Government Public Procurement Order No. P-45021/2/2017-PP(B-II) dtd. 16-09-2020, as amended from time to time and as applicable on the date of submission of tender, we hereby certify that we M/s\_\_\_\_\_ (name of the Bidder) are local supplier meeting the requirement of minimum Local content (50%) as defined in above orders for the material against Tender NIT No\_\_\_\_\_ for the work of \_\_\_\_\_

Details of location at which local value addition will be made is as follows:

-----  
-----

We also understand, false declarations will be in breach of the Code of Integrity under Rule 175(1)(i)(h) of the General Financial Rule for which for which a bidder or its successors can be debarred for up two years as per Rule 151 (iii) of the General Financial Rules along with such other actions as may be permissible under law. Seal and Signature of Authorized Signatory

Signature of the Bidder

Date :

Place :



TO SPECIAL CONDITIONS OF CONTRACT  
PRE CONTRACT INTEGRITY PACT AGREEMENT

General

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 20\_\_, between, on one hand, the Board of Members of New Mangalore Port Authority acting through \_\_\_\_\_, Chief Engineer (Civil), (Name & Designation of the Officer) New Mangalore Port Authority (hereinafter called the 'BUYER/EMPLOYER', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s \_\_\_\_\_ represented by Shri \_\_\_\_\_, Chief Executive Officer (hereinafter called the 'BIDDER' which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the 'BUYER/EMPLOYER' has invited bids for ..... and the BIDDER is submitting his bid for the same and

WHEREAS the BIDDER is a Private company / Public company / Government undertaking / registered partnership firm, constituted in accordance with the relevant law in the matter and the 'BUYER/EMPLOYER' is New Mangalore Port Authority.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

Enabling the 'BUYER/EMPLOYER' to obtain the desired said stores/equipment/services/works at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the 'BUYER/EMPLOYER' will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

**Commitments of the 'BUYER/ EMPLOYER'**

1.1 The 'BUYER/EMPLOYER' undertakes that no official of the 'BUYER/EMPLOYER', connected directly or indirectly with the contract, will demand, take a promise for or accept,

directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

- 1.2 The 'BUYER/EMPLOYER' will, during the pre-contract stage, treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.
- 1.3 All the officials of the 'BUYER/EMPLOYER' will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the 'BUYER/ EMPLOYER' with full and verifiable facts and the same is prima facie found to be correct by the 'BUYER/EMPLOYER' necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the 'BUYER/ EMPLOYER' and such a person shall be debarred from further dealings related-to the contract process. In such a case while an enquiry is being conducted by the 'BUYER/ EMPLOYER' the proceedings under the contract would not be stalled.

### **Commitments of BIDDERS**

3. The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following.:-
  - 3.1. The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the 'BUYER/EMPLOYER' connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
  - 3.2. The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the 'BUYER/EMPLOYER' or otherwise in procuring the Contract or

- forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.
- 3.3. BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
  - 3.4. BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
  - 3.5. The BIDDER further confirms and declares to the 'BUYER/EMPLOYER' that the BIDDER has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the 'BUYER/EMPLOYER' or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
  - 3.6. The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the 'BUYER/ EMPLOYER' or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
  - 3.7. The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
  - 3.8. The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
  - 3.9. The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the 'BUYER/ EMPLOYER' as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
  - 3.10. The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
  - 3.11. The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

- 3.12. If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the 'BUYER/EMPLOYER' or alternatively, if any relative of an officer of the 'BUYER/EMPLOYER' has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.  
The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- 3.13. The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the 'BUYER/EMPLOYER'.
- 3.14. The bidder signing IP shall not approach courts while representing the matters to IEMs and he / she / they will wait their decision in the matter.
4. Previous Transgression
- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify bidder's exclusion from the tender process.
- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.
5. Earnest Money (Security Deposit)
- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount Rupees ..... as Earnest Money/Security Deposit, with the 'BUYER/ EMPLOYER' through any of the following instruments:
- i) Paid by RTGS in favour of FA&CAO, NMPA
- 5.2 The Earnest Money/Security Deposit shall be valid upto a period of 148days or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the 'BUYER/EMPLOYER', including warranty period, whichever is later.
- 5.3 In case of the successful BIDDER, a clause would also be incorporated in the Article pertaining to Performance Security in the Project Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Security in case of a decision by the 'BUYER/EMPLOYER' to forfeit the same without assigning

any reason for imposing sanction for violation of this Pact.

5.4 No interest shall be payable by the 'BUYER/EMPLOYER' to the BIDDER on Earnest Money/Security Deposit for the period of its currency.

## 6. Sanctions for Violations

6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the 'BUYER/EMPLOYER' to take all or any one of the following actions, wherever required:-

- i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
- ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit / Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the 'BUYER/EMPLOYER' and the 'BUYER/ EMPLOYER' shall not be required to assign any reason therefore.
- iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.
- iv) To recover all sums already paid by the 'BUYER/EMPLOYER', and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the 'BUYER/EMPLOYER' in connection with any other contract, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the 'BUYER/EMPLOYER', along with interest.
- vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall, be liable to pay compensation for any loss or damage to the 'BUYER/EMPLOYER' resulting from such cancellation/rescission and the 'BUYER/EMPLOYER' shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
- vii) To debar the BIDDER from participating in future bidding processes for a minimum period of five years, which may be further extended at the discretion of the

'BUYER/EMPLOYER'.

- viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
  - ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the 'BUYER/EMPLOYER' with the BIDDER, the same shall not be opened.
  - x) Forfeiture of Performance Guarantee in case of a decision by the 'BUYER/EMPLOYER' to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The 'BUYER/EMPLOYER' will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the 'BUYER/EMPLOYER' to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.
7. Fall Clause
- 7.1 The BIDDER undertakes that it has not performed/is not performing similar project at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar project was performed by the BIDDER in any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the 'BUYER/EMPLOYER', if the contract has already been concluded.
8. Independent Monitors
- 8.1 The 'BUYER/EMPLOYER' has appointed the following Independent Monitor (hereinafter referred to as Monitor) for this Pact in consultation with the Central Vigilance Commission  
Name and Address of the Monitor: Sri Prem Chand Pankaj, Ex-CMD, NEEPCO, M-402, Pioneer park. Sector 61, Golf course, extension road Gurgaon. Email: prempankaj@gmail.com
- 8.2 The task of the Monitor shall be to review independently and objectively, whether and to

what extent the parties comply with the obligations under this Pact.

8.3 The Monitor shall not be subject to instructions by the representatives of the parties and perform his functions neutrally and independently.

8.4 Both the parties accept that the Monitor has the right to access all the documents relating to the project/bidding, including minutes of meetings.

8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the 'BUYER/EMPLOYER'.

8.6 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the 'BUYER/EMPLOYER', including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.

8.7 The 'BUYER/EMPLOYER', will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.

8.8 The Monitor will submit a written report to the designated Authority of 'BUYER/EMPLOYER' within 8 to 10 weeks from the date of reference or intimation to him by the BUYER / EMPLOYER / BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

#### 9. Facilitation of Investigation

In case of any allegation of violation of any provisions of this pact or payment of commission, the 'BUYER/EMPLOYER' or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

#### 10. Law and Place of Jurisdiction

This Pact is subject to Indian Law.' The place of performance and jurisdiction is the seat of the 'BUYER/EMPLOYER'.

#### 11. Other Legal Actions

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

#### 12. Validity

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the 'BUYER/EMPLOYER' and the BIDDER, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

12.3 If the BIDDER is a partnership or a consortium, this agreement must be signed by all partners or consortium members.

13. The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

BUYER/EMPLOYER

BIDDER

Name of the Officer  
and Designation

CHIEF EXECUTIVE OFFICER

Witness

Witness

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_,

\* Provisions of these clauses would need to be amended/ deleted in line with the policy of the BUYER/ EMPLOYER in regard to involvement of Indian agents of foreign bidders.