

## **Manual for Procurement of Goods & Services**

- The Ministries / Departments have been delegated full powers to make their own arrangements for procurement of goods and services, that are not available on Government e-Marketplace (GeM).
- These powers have to be exercised which have to be exercised as per the Delegation of Financial Power Rules and in conformity with the 'Procurement Guidelines' described below. Common use Goods and Services available on GeM are required to be procured mandatorily through GeM as per Rule 149 of GFR, 2017.
- The term 'goods' used in this manual includes all articles, material, commodity, livestock, medicines, furniture, fixtures, raw material, consumables, spare parts, instruments, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock, assemblies, sub-assemblies, accessories, a group of machines comprising an integrated production process or such other goods (but excludes books, publications, periodicals, and so on, for a library), or intangible products like software, technology transfer, licenses, patents or other intellectual properties procured or otherwise acquired by a procuring entity. Procurement of goods may include certain small work or some services, which are incidental or consequential to the supply of such goods, such as transportation, insurance, installation, commissioning, training and maintenance (Rule 143 of GFR 2017).
- A Competent authority (CA) which is competent to incur expenditure may sanction the purchase of goods required for use in public service in accordance with the Delegation of Financial Rules by following the 'Procurement Guidelines' described in this Manual (Rule 145 of GFR 2017)

### **Categorisation of procurements**

Following are the categories of procurements

- a) Goods.
- b) Services
  - i) Consultancy Services and
  - ii) Non-consultancy services
- c) Works
  - The main difference between goods and works is that the manufacture of goods is done on the supplier's own premises (other than installation/ commissioning). In contrast, 'Works' is executed on the premises of the procuring entity (other than prefabricated components). Works may include incidental 'Goods' and vice-versa.
  - The main difference between Consultancy and Non-consultancy services is the level of intellectual input, which is predominant in Consultancy and not central to non-consultancy. Another difference is that non-consultancy services are repetitive routines with measurable and standardised outputs, while consultancy services are one-off and non-routine, with outputs that are neither precisely measurable nor standardised.



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- The Procurement of IT projects should usually be carried out as a procurement of consultancy services, as the outcomes/deliverables vary from one service provider to another. The IT Projects may include:
  - tailor-made software development;
  - cloud-based services
  - Composite IT system integration services involve the design, development, deployment, and commissioning of IT systems, including hardware supply, software development, bandwidth, and operation/maintenance of the system for a defined period after going live, etc

#### **Basic Aims of Procurement – the Five R's of Procurement**

- 1.** Right Quality
- 2.** Right Quantity
- 3.** Right Price
- 4.** Right Time and Place
- 5.** Right Source

#### **Fundamental Principles of Public Procurement**

- General Financial Rules, 2017 (*Rule 144*) lay down the Fundamental Principles of Public Procurement.



#### **Transparency Principle**

- All procuring authorities are responsible and accountable to ensure transparency, fairness, equality, competition and appeal rights.
- This involves simultaneous, symmetric and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award and management of contracts.
- As part of this principle, all procuring entities should ensure that offers should be invited following a fair and transparent procedure and also ensure publication of all relevant information on the Central Public Procurement Portal (CPPP)

#### **Professionalism Principle**

- As per these synergic attributes, the procuring authorities have a responsibility and accountability to ensure professionalism, economy, efficiency, effectiveness and integrity in the procurement process.
- They must avoid wasteful, dilatory and improper practices violating the Code of integrity for Public Procurement (CIPP)



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### Purchase Preference for MSE

- Under the amended Public Procurement Policy for MSEs, Order 2012, the Central Government Ministries/ Departments/ Public Sector Undertakings shall procure a minimum of 25 per cent of their annual value of goods or services from MSEs.
- In tender, if the L1 price is from someone other than an MSE, participating Micro and Small Enterprises (MSE) quoting prices within a price band of L1+15 (fifteen) per cent shall be allowed to supply up to 25 (twenty-five) per cent of the total tendered value by bringing down their price to L1 price. If there is more than one eligible MSE within such price band who agree to match the L1 price, the 25 (twenty-five) per cent quantity is to be distributed proportionately to them.
- In case the tender item cannot be split or divided, etc., the MSE quoting a price within the band L1+15% may be awarded for full/ complete supply of total tendered value to MSE, considering the spirit of the Policy for enhancing Govt. Procurement from MSEs.

**Timely Payments to MSEs:** Chapter V of the MSMED Act, 2006, also has provisions for ensuring timely payments to the MSE suppliers. The period agreed upon for payment must not exceed forty-five days from the deemed acceptance of the materials supplied by the MSMEs; in case of any discrepancies in the supplies, then the Procuring Entity shall raise an objection to the MSME supplier within 15 days from the date of receipt of materials if such objection is not raised, then it will be taken as deemed acceptance. For delays in payment, the buyer shall be liable to pay compound interest to the supplier on the delayed amount at three times the bank rate notified by the Reserve Bank.

### Procurement Preference to Make in India (MII policy)

**Minimum local content:** The ‘local content’ requirement to categorize a supplier as a ‘Class-I local supplier’ is a minimum of 50 (fifty) per cent. For ‘Class-II local suppliers,’ the ‘local content’ requirement is a minimum of 20 (twenty) per cent. For ‘Non-Local Class’, the local content is less than 20 (twenty) percent.

- If the procuring entity negotiates with the L1 bidder, who is not a ClassI Local Supplier, the margin of purchase preference (L1+20%) should be calculated based on the original L1 price, not the lower negotiated price, and such eligible Class-I Local Suppliers shall be called to match the new negotiated L1 price as per procedure mentioned above for placement of 50% quantity.
- Among all qualified bids, the lowest bid will be termed L1. If L1 is a ‘Class-I local supplier’, the contract for full quantity will be awarded to L1.
- In case the 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 (L1+20%) shall be invited to match the L1 price, and so on, and the contract shall be awarded accordingly. In case none of the ‘Class-I local suppliers’ within the margin of purchase preference matches the L1 price, the contract may be awarded to the L1 bidder.



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- “Class-II local supplier” will not get a preference for any procurement undertaken by procuring entities.
- The bidder shall give self-certification for local content in the quoted item (goods/ works/ services) at the time of tendering. However, at the time of execution of the project, for all contracts above INR 10 Crore, the contractor/ supplier shall be required to give local content certification duly certified by cost/ chartered accountant in practice.
- In case the contractor/ supplier does not meet the stipulated local content requirement and the category of the supplier changes from Class-I to Class-II/ Non-local or from Class-II to Non-local, a penalty upto 10% of the contract value may be imposed.

The energy efficiency labelling programs under BEE are intended to reduce the energy consumption of appliances without diminishing the services they provide to consumers. The higher the stars, the more efficient the appliance is. The threshold ratings prescribed by the Ministry of Finance are:

- ❖ Split Air conditioners - 5 Star (under normal conditions where annual usages are expected to be more than 1000 Hrs)
- ❖ 3 Star (where usage of AC is limited, e.g., in conference rooms)
- ❖ Frost Free Refrigerators - 4 Star
- ❖ Ceiling Fans - 5 Star
- ❖ Water Heaters - 5 Star

#### **Option clause in Tender :-**

- Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakhs, to take care of any change in the requirement during the currency of the contract, a plus/minus option clause [normally 25 (twenty-five) per cent] may be incorporated in the tender document, reserving the purchaser's right to increase or decrease the quantity of the required goods up to that limit without any change in the terms and conditions and prices quoted by the bidders. However, the Competent Authority may approve the inclusion of such a clause in lower denomination tenders if such items have a history of frequent disruptions in the continuity of supplies.

The clause may be framed along the following lines:

“The purchaser reserves the right to increase/decrease the ordered quantity by up to [25] per cent at any time, till the final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period).

#### **Modes of Procurement**

- Offers from prospective bidders in public procurement must be invited according to a procedure that achieves a balance between the need for the widest competition, on one



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hand, and complexity of the procedure, on the other hand. Different modes of procurement and bidding systems are used to suit various procurement circumstances to achieve this balance.

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

**1) Open Tenders**

- a) Open Tender Enquiry (OTE); and
- b) Global Tender Enquiry (GTE)

**2) Procurement through Selected Suppliers**

- a) Limited Tender Enquiry - LTE (up to Rs. 50 (Rupees fifty lakh); and
- b) Special Limited Tender Enquiry (SLTE above Rs. 50 (Rupees fifty lakh under special circumstances)

**3) Nomination Basis Tenders**

- a) Proprietary Article Certificate (PAC); and
- b) Single Tender Enquiry (STE) without PAC

**4) Procurements without Calling Tenders**

- a) Direct Procurement without Quotation;
- b) Direct Procurement by Purchase Committee;

**5) Mandatory Procurement of Goods and Services for Goods or Services available on GeM. (Rule 158 of GFR 2017)**

**Open Tender Enquiry (OTE): -**

- In OTE, an attempt is made to attract the widest possible competition by publishing the NIT simultaneously on the designated websites.
- This is the default mode of procurement and gives the best value for money but the procedure is relatively complex and prolonged.
- OTE procedures through e-procurement or through traditional tendering should be adopted in the following situations:
  - (i) Procurements exceeding the threshold of Rs. 50 lakhs (Rupees fifty Lakh);
  - (ii) All common use requirements with clear technical specifications;
  - (iii) For requirements that are ordinarily available in the open market but it is necessary.
  - (iv) to evaluate competitive offers to decide the most suitable and economical option available; and



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- (v) When requirements are not available from known sources or sources are presently limited and need to be broad based. In such situations, even for procurements below Rs. 50 lakhs (Rupees fifty Lakh), OTE mode may be used, if warranted.

**(Rule 161 of GFR 2017)**

**Terms and Conditions of OTE: -**

- (i) Bidders already registered are also free to participate;
- (ii) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- (iii) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download up to the date of opening of tenders.
- (iv) The procuring entity shall maintain proper records about the number of tender documents sold, list of parties to whom sold, details of the amount received through sale and, also, the number of unsold tender documents, which are to be cancelled after the opening of the tenders.
- (v) The due date fixed for opening of the tender shall be minimum 21 (twenty-one) days from the date of advertisement which may vary, taking into account the nature of material called for and delivery requirements. The due date may be subsequently extended with the approval of the Competent Authority, only if it is felt necessary to have better competition.

**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. Development of local industry also needs to be kept in mind. Hence, it may be viable only in following situations: -

- i) Where Goods of required specifications/quality are not available within the country and alternatives available in the country are not suitable for the purpose;
- ii) Non-existence of a local branch of the global principal of the manufacturer/vendors/ contractors;
- iii) Requirement for compliance to specific international standards in technical specifications; and



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- iv) 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. (Rule 161 of GFR 2017)

**Terms and Conditions of GTE: -**

- i) Advertisement in such cases should be given on Central Public Procurement Portal (CPPP) at [www.eprocure.gov.in](http://www.eprocure.gov.in) and on GeM. An organisation having its own web site should also publish all its advertised tender enquiries on the web site. The procuring entity should also post the complete bidding document in its web site and on CPPP to enable prospective bidders to make use of the document by downloading from the web site. The advertisements for invitation of tenders should give the complete web address from where the bidding documents can be downloaded. In order to promote wider participation and ease of bidding, no cost of tender document may be charged for the tender documents downloaded by the bidders.; and
- ii) The sale/ availability for downloading of tender documents against NIT should not be restricted and should be available freely. Tender documents should preferably be sold/ available for download upto the date of opening of tenders; and
- iii) The tender documents, shall be priced minimally keeping in view the value of the tender as also the cost of preparation and publicity of the tender documents;
- iv) GTE tender documents must be in English and the price should be asked in Indian Rupees or US Dollars or Euros or Pound Sterling or Yen or in currencies under the Reserve Bank of India's notified basket of currencies;
- v) GTE tender documents must contain technical specifications which are in accordance with national requirements or else based on an international trade standard;
- vi) In such cases e-procurement may not be mandatorily insisted upon.
- vii) The due date fixed for opening of the tender shall be minimum four weeks from the date of advertisement which may vary taking into account the nature of material called for as well as the time required to prepare the bids. The due date may be subsequently extended with the approval of the CA only to promote better competition and also considering account delivery requirement.
- viii) No Global Tender Enquiry (GTE) up to Rs. 200 crores shall be invited or such limit as may be prescribed by the Department of Expenditure from time to time.
- ix) In case no Indian manufacturer/ suppliers are found, procurement may be done, through GTE, subject to compliance of provisions of GFR and requirement of procurement through GeM.

**Limited Tender Enquiry (LTE)**

- LTE is a restricted competition procurement, where a preselected panel of vendors (on the list of registered suppliers for the subject matter of procurement) are directly approached for bidding for goods and services not available on the GeM portal
- LTE is a restricted competition procurement, where a preselected list of vendors is directly approached for bidding; bids from uninvited bidders are treated as unsolicited and are normally not entertained, except in special circumstances.



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- This mode provides a short and simple procedure, but may not provide as good a VfM (value for money) 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 between Rs. 5 lakh to Rs. 50 lakh (Rupees five Lakh to fifty Lakh). (Limit has been changed w.e.f. 10.07.2024)

#### **Terms and Conditions**

- (i) Copies of the bidding documents should be sent free of cost (except in case of priced specifications/ drawings) directly by speed post/courier/e-mail to firms which are registered vendors/ contractors. Further, Procuring Entity should also mandatorily publish its limited tender enquiries on Central Public Procurement Portal (CPPP).
- (ii) Apart from CPPP, the organisations should publish the tender enquiries on the Department's or Ministry's web site.
- (iii) A simplified single Page Bid Document should be used, instead of a detailed Bid Document. The minimum number of bidders to whom LTE should be sent is more than three. In case less than three approved vendors/contractors are available, LTE may be sent to the available approved vendors/contractors with approval of the Competent Authority, duly recording the reasons. The requirement should then be marked for development of more sources by the Supplier Registration section.
- (iv) Adequate time should be given for submission of quotes, which should not be less than three weeks. A longer period (six weeks) could be given in case of import of the materials and, in complex cases, if justifications are given and allowed.
- (v) Since selected bidders are normally registered with the Procuring Entity, Bid Security and Performance Security are normally not taken in LTE

#### **Special Limited Tender Enquiry for Procurements More than Rs. 50 (Rupees fifty Lakh)**

- LTE mode, even for values higher than Rs. 50 lakh (Rupees fifty Lakh) (limit has been changed w.e.f. 10.07.2024) (Rule 162 of GFR 2017), where normally OTE should have been done, is permissible in certain special circumstances as follows. Powers to sanction procurement on LTE basis in such special cases may be laid down in SoPP based on a certificate of urgency signed by the indenter. This mode has the merit of being quicker but VfM obtained may be less than in case of OTE; hence it should be restricted to rare situations:
- (i) The competent authority in the Ministry / Department certifies that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry/Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated earlier.
- (ii) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.



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- (iii) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote.
- (iv) Nature of items to be procured is such that pre-verification of competence of firm is essential, hence requires registration of firms.; and Government policy designates procurement from specific agencies.

#### **Terms and Conditions**

- (i) The tendering process would be same as in the case of a normal LTE described above. However, the bidding documents are more detailed as in the case of OTE; and
- (ii) The indenter should certify that there is an existing or prospective urgency for operational or technical requirements and any additional expenditure involved by not procuring through an advertised tender enquiry is justified in view of urgency. The indenter should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

#### **Proprietary Article Certificate**

- In procurement of goods, certain items are procured only from Original Equipment Manufacturers (OEMs) or manufacturers having proprietary rights (or their authorised dealers/stockists) against a PAC certificate signed by the appropriate authority.
- Once a PAC is signed at the designated level as per SoPP (Schedule of Procurement Power), the powers of procurement are the same as in normal conditions as per the delegation of powers. This mode may be shortest but since it may provide lesser VfM (Value for Money) as compared to LTE/OTE and also strains the transparency principle, it should be used only in justifiable situations.
- No item should be procured on PAC basis for more than three years, after which a mandatory OTE mode may be used, to test the market

#### **Single Tender Enquiry (STE) without a PAC**

- A tender invitation to one firm only without a PAC certificate 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:
  - In a case of existing or prospective emergency relating to operational or technical requirements to be certified by the indenter, the required goods are necessarily to be purchased from a particular source subject to the reason for such decision being recorded and approval of the competent authority obtained.
  - For standardization of machinery or components or spare parts to be compatible to the existing sets of machinery/equipment (on the advice of a competent technical expert and approved by the competent authority), the required goods are to be purchased only from a selected firm.

**(Rule 166 of GFR 2017)**



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### **Drawals against Rate Contract (RC)/Framework Contract (FC)**

- RC is essentially a price agreement with the vendors/contractors at a specified price and terms and conditions during the period covered by the RC.
- No quantity is mentioned nor is any minimum commitment guaranteed in the RC.
- RC is most frequently used in procurement of goods, but can as well be used mutadis\_mutandis in works, services and consultancy – where it is commonly known as a Framework Contract (FC).
- Rate Contract is not required to be executed for common use items like computers, printers, photocopiers, paper and stationary, other office items like furniture, bottled water etc., which are being placed on GeM and will now be applicable only for specialized and engineering items which are not available on GeM, and are identified as common use items and are needed on recurring basis by various Central Government Ministries or Departments.

### **Direct Procurement without Quotation**

- Direct procurement of goods without formal quotations is normally done for the smallest value procurements. This is also called petty purchase. It should be used for off the-shelf goods of simple and standard specifications and when the required goods (of required specification or within required delivery period etc.) are not available on GeM)
- However, it is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM. The procedure is the simplest and quickest but VfM may be poor; hence it is suitable only in very low value, urgent and simple requirements in the following situations:
  - Procurements do not exceed the threshold (for each requirement) of Rs. 50,000 (Rupees fifty Thousand) for each case;
  - The requirement is urgent but was not covered in the procurement plan; and
  - The requirement is for off-the-shelf goods of simple and standard specifications. Examples of procurement are day-to-day needs of the office and field units, and so on.

**(Rule 154 of GFR 2017)**

### **Terms and Conditions**

- (i) The competent officer of the procuring entity can initiate and complete this purchase after diligent enquiries from the market and filling the certificate prescribed
- (ii) Such powers to a limited extent can also be given to various user sections for operational needs.
- (iii) Normally an imprest amount (with facilities for cheque payments) sufficient for two months' estimated procurements can be sanctioned for such officers to handle such procurements.
- (iv) The imprest amount can be recouped on monthly basis by submission of expense vouchers.
- (v) In a summary form, records should be kept of the vendors/contractors approached and prices indicated by them.
- (vi) Selection of seller by diligent market enquiry is of essence of this mode of procurement.

- (vii) In larger cities, the presence of reputed shopping malls may also be included in the market survey. Reputed internet shopping portals may also be explored.
- (viii) Supervisors should carry out periodic review of such procurements to ensure that the demand is not split into small quantities for the sole purpose of avoiding the necessity of getting an approval from the higher authority required for sanctioning the purchase of the original demand or for avoiding LTE or OTE mode of procurement
- (ix) To keep a better control, an annual ceiling may be fixed for each office for such a mode of procurement say Rupees five Lakh for each office per year Each office should maintain records to monitor such limits
- (x) Supervisors should cross check a percentage of cases in the market for prices, fake vouchers, and so on. Supervisors should also check that the same vendor(s) is not being patronised repeatedly. For the sake of transparency, payments should be made by cheque or through Electronic Clearance Service except that cash payment may be allowed up to Rs. 5,000 (Rupees Five thousand). Staff involved with such procurements should not continue in the same role for long and should be rotated frequently.

#### **Direct Procurement by Purchase Committee**

- This mode of procurement is used for procurements valued above Rs. 50,000/- (Rupees fifty Thousand) and up to Rs. 5,00,000 (Rupees five Lakh) only on each occasion. (The limit has been amended w.e.f. 10.07.2024)
- It is made by a local purchase committee constituted by HOD only in case when a certain item is not available on the GeM portal (of required specification or within required delivery period etc.).
- However, it is mandatory for a buyer to generate a “GeM Availability Report and Past Transaction Summary” (GeMAR&PTS) with a unique ID on GeM portal using his login credentials on GeM for procurement outside GeM.
- This mode of procurement is described in parlance of procurement of goods; however, in principle, it is equally applicable to contingency expenditure on small works/services also.
- This procedure is slightly more complex and is likely to provide better VfM than direct procurement without quotation and hence is suitable for marginally higher thresholds.

#### **Terms and Conditions**

- (i) The controlling ministry may lay down an annual ceiling value per office/unit for such procurements;
- (ii) In case of emergency procurement, facility of withdrawing requisite advance cash amount and its subsequent accountal may also be considered.
- (iii) This is intended to be fast track, simple mode of procurement. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier.
- (iv) Selection of suitable product and supplier by actual market survey (not by calling of tenders like a mini LTE) is of essence of this mode.



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- (v) Before recommending placement of the purchase order, members of the committee will jointly record the certificate prescribed ; and
- (vi) In larger cities, the presence of reputed shopping malls may also be included in the market survey. Reputed internet shopping portals may also be explored.

### **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.

### **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 requirement are simple or moderate; capability of source of supply is not too crucial and the value of procurement is not too high;

### **Single Stage Two Envelopes System (Two Bid System) (Rule 163 of GFR 2017):**

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

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

- The financial bids of technically non-compliant bidders should be returned unopened to the respective bidders by registered acknowledgement due/reliable courier or any other mode with proof of delivery. In e-Procurement, financial bids of technically non-compliant offers would not get opened;

#### **Two Stage Bidding - Expression of Interest Tenders – Market Exploration**

- There are instances where the equipment/ plant to be procured is of complex nature and the procuring organization may not possess the full knowledge of either the various technical solutions available or the likely sources for such products in the market.
- To meet the desired objectives of a transparent procurement that ensures value for money simultaneously ensuring upgradation of technology & capacity building- it would be prudent to invite a two-stage Expression of Interest (EoI) Bids and proceed to explore the market and to finalise specifications based on technical discussions/presentations with the experienced manufacturers/suppliers in a transparent manner.
- Expression of Interest (EoI) bids may be invited in following situations:
  - It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders;
  - The character of the subject matter of procurement is subject to rapid technological advances or market fluctuations or both;
  - The procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of requirements in quantities sufficient to establish their commercial viability or to recover research and development costs; or
  - The bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement

**(Rule 164 of GFR 2017)**

#### **Electronic Procurement (e-Procurement)**

- It is mandatory for Ministries/ Departments to receive all bids through e-procurement portals in respect of all procurements. Ministries/ Departments which do not have a large volume of procurement or carry out procurements required only for day-to-day running of offices and also have not initiated e-procurement through any other solution provided so far may use e-procurement solution developed by NIC.
- Other Ministries/ Departments may either use e-procurement solution developed by NIC or engage any other service provider following due process.
- In individual cases where national security and strategic considerations demands confidentiality, Ministries/ Departments may exempt such cases from e-procurement after seeking approval of concerned Secretary and with concurrence of Financial Advisers.

### **Electronic Reverse Auction (RA)**

- Electronic Reverse Auction is a type of auction (classified as dynamic procurement method) where the starting price, bid decrement, duration of auction, maximum number of automatic extensions are announced before start of online reverse auction.
- If required, RA may be preceded by an e-Procurement stage of eligibility/ PQB(Pre Qualified Bidder) to shortlist competent bidders who would be allowed to participate in the RA.
- The shortlisted bidders can after the start of RA start bidding online in an iterative process wherein the lowest bidder at any given moment can be displaced by an even lower bid of a competing bidder, within the duration of the RA.
- If a new lower bid is received within last few minutes (say two minutes) of closing time, the closing time may get automatically extended by few minutes (say five minutes) for others to respond.
- Maximum number of such extensions may be stipulated (say five).
- The most favourable bid at the end of stipulated / extended time is declared as successful.
- While permitting use of RA, CVC has asked the Departments/organisations to themselves decide on reverse auction for purchases or sales and work out the detailed procedure in this regard.
- It has, however, to be ensured that the entire process is conducted in a transparent and fair manner.
- A procuring entity may choose to procure a subject matter of procurement by the electronic reverse auction method, if:
  - Items for Reverse Auction may be selected carefully.
  - Items of strategic, critical and vital nature, items in short supply in market and where there are only a few suppliers are not good candidates for reverse auction.
  - Items in the nature of commodities, Commercially-off-the-shelf items, items having large number of suppliers and high value procurements may be more amenable to reverse auction;
  - It is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;
  - There is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, so that effective competition is ensured;
  - The criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms;
  - In cases where pre-qualification of bidders is considered necessary, reverse auction may be carried out after a separate PQB (electronic or otherwise) among the successful bidders only.
- Subject to more detailed guidelines in the category-specific manual or other guidelines, the procedure for electronic reverse auction shall include the following, namely:
  - The procuring entity shall solicit bids through an invitation to the electronic reverse auction to be published or communicated in accordance with the provisions similar to e-procurement; and
  - The invitation shall, in addition to the information as specified in e-procurement, include details relating to:
    - Access to and registration for the auction;
    - Opening and closing of the auction;

- Norms for conduct of the auction; and
- Any other information as may be relevant to the method of procurement.

**(Rule 167 of GFR 2017)**

#### **One Stop Government e-Marketplace (GeM)**

- An online marketplace (or e-commerce marketplace) is a type of e-commerce site where product or services are offered by a number of sellers and all the buyers can select the product/ services offered by any one of the seller, based on his own criteria.
- In an online marketplace, Purchaser's transactions are processed by the marketplace operator and then product/ services are delivered and fulfilled directly by the participating retailers.
- Other capabilities might include auctioning (forward or reverse), catalogues, ordering, posting of requirements by Purchasers, Payment gateways etc.
- In general, because online marketplaces aggregate products from a wide array of providers, selection is usually wider, availability is higher, and prices are more competitive than in vendor-specific online retail.
- Ministry of Commerce has developed an online Government e-Market Place for common use goods and services.
- The procurement process on GeM is end to end from placement of supply order to payment to suppliers.
- This is to ensure better transparency and higher efficiency. All the process will be electronic and online. The Procurement of Goods and Services by Ministries or Departments is mandatory for Goods or Services available on GeM as per Rule 149 of GFR, 2017.
- The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under:-

  - Up to {Rs.50,000/-} through any of the available suppliers on the GeM, meeting the requisite quality, specification, and delivery period (in case of procurement of Automobiles only the ceiling of direct purchase will be no limit);
  - Above Rs.50,000/- and up to Rs.10,00,000/- through the GeM Seller having lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification, and delivery period. The tools for online bidding and online reverse auction available on GeM can be used by the Buyer even for procurements less than Rs 10,00,000.
  - **The above limit has been amended w.e.f. 10.07.2024.**
  - Above Rs.10,00,000/- through the supplier having lowest price meeting the requisite quality, specification, and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM
  - The invitation for the online e-bidding/reverse auction will be available to all the existing Sellers or other Sellers registered on the portal and who have offered their goods/services under the particular product/service category, as per terms and conditions of GeM.
  - The above mentioned monetary ceiling is applicable only for purchases made through GeM. For purchases, if any, outside GeM, relevant GFR Rules shall apply.

- The Ministries/Departments shall work out their procurement requirements of Goods and Services on either “OPEX” model or “CAPEX” model as per their requirement/suitability at the time of preparation of Budget Estimates (BE) and shall project their Annual Procurement Plan of goods and services on GeM portal within 30 (thirty) days of Budget approval.
- The Government Buyers may ascertain the reasonableness of prices before placement of order using the Business Analytics (BA) tools available on GeM including the Last Purchase Price on GeM, Department’s own Last Purchase Price etc.
- A demand for goods shall not be divided into small quantities to make piecemeal purchases to avoid procurement through L-1 Buying / bidding / reverse auction on GeM or the necessity of obtaining the sanction of higher authorities required with reference to the estimated value of the total demand.

#### **Preparing bid documents, publication, receipt and opening of bids**

The following essential aspects should be contains in bid document

- Description of the subject matter of procurement, its specifications including the nature, quantity, time and place or places of delivery;
- Limitation or preference for participation by bidders in terms of the Government policies;
- The criteria for eligibility and qualification to be met by the bidder (the eligibility criteria should take care of the supplier's eligibility to receive such a Government contract. The qualification criteria should take care of the supplier's past performance, experience, technical competence and production capacity of the subject goods, financial strength to handle the contract successfully, compliance with environmental protection regulations/ Environment Management System and so on);
- There are no such qualifications for the bidders that would be advantageous to the foreign manufactured goods at the cost of domestically manufactured goods.
- The procedure as well as date, time and place for obtaining, submitting and opening of the bids;
- Terms of delivery/completion;
- Suitable provisions for enabling a bidder to question the bidding conditions, bidding process and/or rejection of its bid. These provisions should include a time frame in which procuring entity will address the bidder's questions; (Rule 173 (iv) of GFR 2017).
- Criteria for determining the responsiveness of bids, criteria as well as factors to be taken into account for evaluating the bids on a common platform and the criteria for awarding the contract to the responsive, most advantageous (lowest/highest as the case may be) bidder should be clearly indicated in the bidding documents.
- SBDs (Standard Bidding Document) should include a clause that “if a firm quotes NIL charges/consideration, the bid shall be treated as unresponsive and will not be considered”;
- Suitable provision for settlement of disputes, if any, emanating from the resultant contract, should be kept in the bidding document; (Rule 173 (v) of GFR 2017) and
- Essential terms of the procurement contract including a suitable clause mentioning that the resultant contract will be interpreted under Indian laws (Rule 173 (vi) of GFR 2017)

### **Tender Documents**

- The tender document is the fundamental document in the public procurement process as after award of the contract it becomes part of the contract agreement. All necessary provisions governing the contract should be clearly provided in the tender document.
- Examples are technical specifications, drawings, commercial terms and conditions including time period, inspection, payment terms, obligations of the procuring entity and the suppliers timeframe/ milestones, tax implications, compliance framework for statutory and other norms, dispute resolution. Provisions/ clauses in the tender document should be clear to avoid differences in interpretation and possible time overrun, cost overrun and quality compromises. Model Tender Documents issued by the DoE may be used, with due customisation.
- In tenders containing General Conditions of Contract (GCC), additional/ special conditions to be incorporated in the tender document, shall be need based and specific.
- The GCCs should not be altered and changes, if any, in conditions of contract should only be made through the Special Conditions of Contract.
- Procuring entities may issue instructions regarding appropriate delegation of authority for variations and changes in the scope of the contract.
- Provision of price variation, wherever considered appropriate, as well as methodology for calculation of the same shall be clearly stipulated in the tender document
- Technical and Financial eligibility Criteria for the bidders are important in the public procurement process. They shall be clear and fair, having regard to the specific circumstances of the procurement. Appropriate parameters should be prescribed in the eligibility criteria for bidders, to enable selection of the right type of bidders in public interest, balancing considerations of quality, time and cost.
- Open online tendering should be the default method to ensure efficiency of procurement. Public authorities should also keep the experience criteria broad based so that bidders with experience in similar nature of items/ goods can participate.
- Pre-bid conference may be conducted for large value tenders by Procuring Entities. The Place and time of pre-bid conferences should be mentioned in the tender document and/ or publicized through the website of the procuring entity and/ or through newspaper publication.

### **Contents of Tender Documents (Rule 168 of GFR 2017)**

The main sections of the SBD are:

- Notice Inviting Tender (NIT);
- Instructions to Bidders (ITB);
- Appendix to Instructions to Bidders (AITB) (instead of modifying ITB, it is better to have information specific to a procurement as a separate section);
- Eligibility and qualification criteria;
- Schedule of requirements
- Technical specifications (including Drawings) and Quality Assurance (Inspections and Tests);
- General Conditions of Contract (GCC);

- Special Conditions of Contract (SCC) (instead of modifying GCC every time, it is better to have it as a separate section); and
- Standard formats, including Bid Cover letter, price schedules, bank guarantees and contract format.

#### **Bid Validity**

A bid shall remain valid for the period mentioned in the Tender Document (90 days if not so specified).

#### **Special Conditions in GTE Procurements**

- a) **Currency of Bidding:** In GTE tenders, the Foreign Bidders are allowed to quote price (and get paid) in RBI's notified basket of foreign currencies – US Dollar or Euro or Pound Sterling or Yen etc., in addition to the Indian Rupees - except for expenditure incurred in India (including agency commission if any) which should be stated in Indian Rupees. Indian Bidders are to quote in INR only.
- b) **Agency Commission:** The amount of Agency Commission, (normally not exceeding five percent) payable to the Indian Agent should not be more than what is specified in the Agency agreement (a certified copy should be submitted along with the bid) between the bidder and the Indian Agent.

#### **Cost and Availability of Tender Documents**

Estimated Value of Tender	Tender Document Cost
Below Rs 25 Lakh	Rs. 500
Rs 25 Lakh to Rs 2 Crore	Rs. 1,500
Rs 2 Crore to Rs. 25 Crore	Rs. 2,500
Rs 25 Crore to Rs. 50 Crore	Rs. 5,000
Above Rs 50 Crore	To be decided on case-to-case basis

#### **Bid Security (Earnest Money): -**

- range between 2-5% of the estimated value of the goods to be procured.
- EMD not required if tender value is upto Rs 5,00,000/- (five lakh)
- In case the bid security is more than a threshold (Rupees five lakh) and in case of foreign bidders in GTE tenders, it may be in the form of a bank guarantee (in equivalent Foreign Exchange amount, in case of GTE) issued/ confirmed from any of the commercial banks in India in an acceptable form.
- The bid security is normally to remain valid for a period of 45(forty-five) days beyond the final bid validity period
- Bid securities of the unsuccessful bidders should be returned to them at the earliest after expiry of the final bid validity period and latest by the 30th day after the award of the contract.
- Bid security should be refunded to the successful bidder upon receipt of performance security.

- However, in the case of two-packet or two-stage tendering, Bid securities of unsuccessful bidders during the first stage, i.e., technical evaluation, etc., should be returned within 30 days of declaration of the result of the first stage, i.e., technical evaluation, etc.

#### **Performance Security (Rule 171 of GFR 2017)**

- To ensure due performance of the contract, performance security [or Performance Bank Guarantee (PBG) or Security Deposit (SD)] is to be obtained from the successful bidder awarded the contract.
- From 01.01.2024 the performance security for Goods/services will be 03%-05% of value of contract. (3%-10% for Work)
- In scrap tender, the Security Deposit will be 25% of bid value.
- Submission of Performance Security is not necessary for a contract value up to Rupees 50 (fifty) Lakh
- Performance Security is to be furnished by a specified date (generally 14(fourteen) – 28 (twenty Eight) days after notification of the award) and it should remain valid for a period of 60 (sixty) days beyond the date of completion of all contractual obligations of the supplier, including warranty obligations.
- Procuring Entity may exempt the following entities (on their specific requests or otherwise) from submission of Performance Security:
  - a) Govt. Ministries, Departments, Attached and Subordinate Offices, Autonomous bodies,
  - b) OEM in whose favour PAC, in tenders issued against PAC.

#### **Advance Payment**

- Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made. However, it may become necessary to make advance payments in the following types of cases:
- Advance payment demanded by firms holding maintenance contracts for servicing of air-conditioners, computers, other costly equipment, etc.;
- Advance payment demanded by firms against fabrication contracts, turn-key contracts; and so on;
- Such advance payments should not exceed the following limits except in case of procurement of arms and ammunitions from ordnance factories:
  - Thirty per cent of the contract value to private firms;
  - Forty per cent of the contract value to a state or central Government agency or PSU; or
  - In case of the maintenance contract, the amount should not exceed the amount payable for six months under the contract.
  - In exceptional cases, the Administrative Department may relax the ceilings mentioned above with prior concurrence of the Associated/ integrated Finance. While making any advance payment as above, adequate safeguards in the form of a bank guarantee, and so on, should be obtained from the firm. However, the bank guarantee need not be insisted upon in case of procurement of arms

and ammunitions from ordinance factories. Further, such advance payments should be generally interest bearing, suitable percentages for which are to be decided on a case-to-case basis.

### **Contract Management**

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

Normally, the following issues are handled during this phase:

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



### **Amendment to the Contract**

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



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### **Option Clause**

- Under this clause, the purchaser retains the right to place orders for an additional quantity up to a specified percentage of the originally contracted quantity at the same rate and terms of the contract, during the currency of the contract.
- This clause and percentage should be part of the Bid Document and the contract and ideally should not exceed 25-30%.
- Normally, for raw materials/consumables of regular and year-on-year recurrent requirements, all tenders of value above Rs. 50 (Rupees fifty) lakh should invariably include this clause
- The clause may be framed along following lines:

*“The purchaser reserves the right to increase / decrease the ordered quantity by up to [25] per cent at any time, till final delivery date (or the extended delivery date of the contract), by giving reasonable notice even though the quantity ordered initially has been supplied in full before the last date of the delivery period (or the extended delivery period)*

### **Safeguards for handing over Procuring Entity materials/equipment to contractors;**

- Before the final payment or release of PBG/SD, a certificate may be taken from the concerned Department that the contractor has returned all documents, drawings, protective gear, material, equipment, facilities and assets loaned, including all ID cards and gate passes, and so on, in good condition.
- Further, it should be certified that payment from the contractor has been received for usage of electricity, water, crane, accommodation, weighing facility, and so on. For low value items of less than Rs. 1,00,000 (Rupees One Lakh), or for sending spares for repairs to the OEMs, this stipulation of the bank guarantee may be waived and, if feasible, an indemnity bond may be taken.

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

- It should be ensured that all payments due to the firm, including release of the performance security, are made on a priority basis without avoidable delay as per the tender/contract conditions. Before the payment is made, the invoice should be crosschecked with the actual receipt of material to ensure that the payment matches the actual performance.
- Proper procedures for safe custody, monitoring and return of bank guarantees and other instruments may be followed. Chapter 6 has more details in this regard.
- Before making a final payment or before releasing the performance bank guarantee, a ‘No Claim Certificate’ may be insisted upon from the supplier to prevent future claims.
- Whenever a bank guarantee is released following due procedure and safeguards, acknowledgement thereof should also be taken from the contractor.

### **Delay in payment to the contractors:**

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

### **Monitoring of Supplier Performance**

- As soon as the order is issued, entry shall be made in the progress of supply order register recording therein the name of the supplier, items, rate, quantity, amount, delivery schedule, and so on. Monitoring should ensure that suppliers adhere to contract terms, performance expectations are achieved (such as timely deliveries, quality of goods supplied, and adherence to proper procedure for submitting invoices, and so on) and any problems are identified and resolved in a timely manner.

### **Delivery Period**

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

### **Force Majeure Clause**

- A Force Majeure (FM) means extraordinary events or circumstance beyond human control such as an event described as an act of God (like a natural calamity) or events such as a war, strike, riots, crimes (but not including negligence or wrong-doing, predictable/seasonal rain and any other events specifically excluded in the clause).
- If the performance in whole or in part or any obligation under this contract is prevented or delayed by any reason of FM for a period exceeding 90 (ninety) days, either party may at its option terminate the contract without any financial repercussion on either side.

### **Liquidated Damages**

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

### **Quantum of LD**

- While granting extension of the delivery period, where the delivery of stores or any instalment thereof is accepted after expiry of the original delivery period, the CA may recover from the contractor, as agreed, the LD a sum equivalent to **0.5 (half) per cent** of the prices of any portion of stores delivered late, for each week or part thereof of delay subject to a maximum deduction of the 5% (or any other percentage if prescribed in the contract) of the total contract value.
- In case of inordinate delay this maximum deduction shall be 10% of the total contract value.
- Inordinate Delays: Inexcusable delays of more than one-fourth (25%) of the total completion period shall be treated as inordinate delays.

### **Disposal of Scrap Goods**

- Competent Authority to declare and dispose off Scrap Material may be laid down in the SoPP, based on the 'Book Value' or 5% (five percent) of the Original/ Market Value of new goods.
- The CA (competent Authority) may relax this need for survey by SC (Survey Committee), as a standing order, in the case of a list of known items of scrap like Newspapers, containers etc. of small value (Rs. 15,000 – Rupees fifteen Thousand).

#### **Modes of Disposal**

- The mode of disposal may be determined by the CA, keeping in view the necessity to avoid accumulation of such goods, consequent blockage of space and also deterioration in value of goods to be disposed of. The usual modes of disposal of scrap are:
- Small value scrap such as waste paper or industrial sweepings, and so on, up to a value of Rs. 15,000 (Rupees Fifteen thousand) in each case may be sold directly to the local scrap dealers on a summary quotation basis; and
- Scrap upto Rupees two Lakh (Now it has been revised from Rs.2 Lakh/- to Rs.4 Lakh w.e.f 10.07.2024) may be sold on a Limited Tender basis to locally known Scrap Dealers of relevant category.
- Sale through the e-auction portal, or a tender for disposal or traditional public auction may be resorted to for scrap value above Rupees Four lakh. E-Auction should be the preferred mode for such disposals, using the e-Auction platforms of NIC, MSTC, Indian Railways or any other appropriate portal;
- Certain useable machinery/ spare may still be useable by other Ministries/ Departments/ PSUs; these should be disposed at book value plus 20 (twenty) per cent, 7.5 (seven and a half) per cent freight +12.5 (twelve and a half) per cent handling charges directly to the concerned organization.

**Basic Pay**

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